

BOARD OF REGISTERED NURSING

FINAL STATEMENT OF REASONS

Effective Date

The Board of Registered Nursing (Board) requests that this regulatory proposal become effective upon filing to align as closely as possible with the statutory implementation date of July 1, 2020, in Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018). AB 2138 changed a policy of automatic denials of licensure for individuals with criminal convictions. These regulations make clear the Board's statutory commitment to providing an opportunity for a "second chance" and explain how the Board will individually examine each licensure, renewal, or reinstatement decision for individuals with a criminal conviction. Further, they clarify to the public how the Board will decide which convictions are substantially related to licensure.

As noted by the public comments received and discussed herein, these regulations would benefit all Californians, both those given a "second chance" for licensure and those that could employ or receive services from them. Further, allowing for licensure and employment could potentially reduce recidivism as well as provide Californians with greater choices in licensees. Therefore, it would be of public benefit to hasten the effective date of these regulations.

Subject Matter of Proposed Regulations: Unprofessional Conduct, Disciplinary Guidelines, and Criminal Conviction Substantial Relationship and Rehabilitation Criteria

Sections Affected: California Code of Regulations (CCR), Title 16, Division 14, Article 4, sections 1441, 1444, 1444.5, and 1445

Updated Information

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and incorporated as though set forth herein.

The information contained therein is updated as follows:

On June 8, 2020, the Board provided 15 days' notice of modified text. Below is a description of the modifications that were made to the text.

Section 1444

A. Insertion in subdivision (a) of “,” after “141”, and deletion of “or.”

Because the Board is proposing to add the Business and Professions Code (BPC) sections enumerated in B., infra, it proposes to add a comma after “141, and eliminate “or” since the amendment outlined in B. creates an additional list item.

B. Insertion in subdivision (a) of “or Sections 2761 or 2765.”

The cited sections refer to grounds for denial and discipline listed in the Board’s practice act for “substantially related” offenses. They are proposed to be added here so that references to substantial relationship are addressed together in one regulation. This amendment will add clarity to this subdivision.

C. Insertion in Note of Reference section 2765.

The Board proposes to add this section to the Reference section of the regulation because the regulation, as modified, implements, interprets and/or makes specific this additional BPC section.

Section 1445

A. Insertion in re-numbered subdivision (a) of “Denial of a license or certificate.”

The Board proposes the addition of this category because it lends greater organization and clarity to the regulation.

B. Re-numbering of subdivision (a)(1)-(5) to (1)(A)-(E).

The Board proposes this re-numbering as a result of the creation of new subdivision (a).

C. Deletion in re-numbered subdivision (a)(1) of “was” and insertion of “has been.”

The Board proposes to delete “was” and replace it with “has been” because “has been” is used to refer to something which started in the past and is still continued in the present tense. “Was,” on the other hand, is used to refer to some action which was going on at some time in the past. The Board prefers to use “has been” to include the present tense so the relevant time period for a conviction includes up to the present.

D. Re-numbering of subdivision (b)(1)-(6) to (2)(A)-(F).

The Board proposes this re-numbering as a result of the creation of new subdivision (a).

E. Insertion in subdivision (a)(2) of "If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the denial is based on professional misconduct, or the denial is based on one or more of the grounds specified in Sections 2761 or 2762 of the code," deletion of "If subdivision (a) is inapplicable for considering the denial of a license under Section 480, or," and deletion of ". 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."

The original text of subdivision (a)(2) was unclear in specifying the circumstances when the regulation would apply. Instead of catch-all language, the Board proposes to delete the former preface to the regulation and enumerate each specific instance of when subdivision (a)(1) would not apply, and proposes to include all of the specified categories.

The Board proposes to cite BPC sections 2761 and 2762 since they are in the Board's practice act and authorize the Board to deny a license or certificate. This would make the regulation inclusive of all of the instances in which the Board could deny a license or certificate.

F. Insertion in subdivision (a)(2)(A) and (a)(2)(B) of "professional misconduct."

The addition of "professional misconduct" to subdivision (a)(2)(A) and (a)(2)(B) is made necessary by the addition of "professional misconduct" in subdivision (a)(2).

G. Insertion in subdivision (a)(2)(E) of "s" after "subdivision," re-numbering of (a)(1)-(5) to (a)(1)(A)-(E), and deletion of "-" and insertion of "through."

The Board proposes to pluralize "subdivision" because subdivision (a)(2)(E) cites multiple subdivisions and to re-number the list cited therein because of the re-numbering of subdivision (a)(1).

The Board proposes the third amendment to lend greater clarity to the subdivision.

H. Deletion in subdivision (a)(2)(B) of "under Section 480 of the code."

Because the Board proposes to add "professional misconduct" to subdivision (a)(2), that necessitates the removal of this phrase because the amended subdivision now encompasses more than crimes and acts enumerated in section 480.

I. Re-numbering of subdivisions listed in subdivision (a)(2)(C).

Re-numbering is necessary of the cited subdivisions because of the re-numbering of subdivision (a)(2).

J. Insertion in re-numbered subdivision (b) of "Suspension or revocation of a license or certificate."

The Board proposes the addition of this category because it lends greater organization and clarity to the regulation.

K. Re-numbering of subdivision (c)(1)-(5) to (1)(A)-(E).

The Board proposes this re-numbering as a result of the creation of new subdivision (b).

L. Insertion in subdivision (b)(2) of "If the licensee or certificate holder has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the licensee or certificate holder did not make the showing of rehabilitation based on the criteria in subdivision (b)(1), the suspension or revocation is based on a disciplinary action as described in Section 141 of the code, or the suspension or revocation is based on one or more of the grounds specified in Sections 2761 or 2762 of the code," deletion of "If subdivision (c) is inapplicable for considering the suspension or revocation of a license or certificate, or the board determines that the licensee or certificate holder did not make the showing of rehabilitation based on the criteria in subdivision (c)," and deletion of ". The board shall find that the licensee or certificate holder made a showing of rehabilitation and is presently fit for a license or certificate if, after considering the following criteria, the board finds that the person is rehabilitated."

The original text of subdivision (b)(2) was unclear in specifying the circumstances when the regulation would apply. Instead of catch-all language, the Board proposes to delete the former preface to the regulation and enumerate each specific instance of when

subdivision (b)(1) would not apply, and now proposes to include all of the specified categories.

The Board proposes to cite BPC sections 2761 and 2762 since they are in the Board's practice act and authorize the Board to discipline a license or certificate. This would make the regulation inclusive of all of the instances in which the Board could discipline a license or certificate.

M. Insertion in subdivision (b)(2)(A) and (b)(2)(C) of "disciplinary action(s)."

The addition of "disciplinary action(s)" to subdivision (b)(2)(A) and (b)(2)(C) is made necessary by the addition of "disciplinary action" in subdivision (b)(2).

N. Insertion in subdivision (b)(2)(E) of "s" after "subdivision," re-numbering of (c)(1)-(5) to (b)(1)(A)-(E), and deletion of "-" and insertion of "through."

The Board proposes to pluralize "subdivision" because subdivision (b)(2)(E) cites multiple subdivisions and to re-number the list cited therein because of the re-numbering of subdivision (b)(2).

The Board proposes the third amendment to lend greater clarity to the subdivision.

After consultation with the Office of Administrative Law, the Board made non-substantive amendments to the text. These amendments are summarized below.

Section 1444

Subdivision (a): The Board changed "certification" to "certificate" for consistency throughout the regulations.

Authority: The Board deleted section 480 from the Authority as it was not properly cited as such.

Section 1445:

Subdivision (a)(1):

- a. The Board added "or certificate" for consistency throughout the regulations.
- b. The Board deleted "has established present fitness for a license" for consistency with other programs' regulations for clarity to those applying the regulations.

Subdivisions (a)(2)(B) and (a)(2)(C): The Board added "professional misconduct" to these subdivisions based on the use of the term in subdivision (a)(2).

Subdivision (b)(1):

- a. The Board replaced "person holding a license or certificate holder" with "licensee or certificate holder" for consistency throughout the regulations.
- c. The Board deleted "and is presently fit for a license" for consistency with other programs' regulations for clarity to those applying the regulations.

Subdivision (b)(1)(D): The Board added "or certificate holder's" for consistency throughout the regulations.

Subdivision (b)(2)(D): The Board deleted "and" for consistency throughout the regulations.

Subdivision (b)(2)(F): The Board added "proceedings" and placed "Section 1203.4 of the" before Penal Code and deleted "section 1203.4" after Penal Code for consistency with other programs' regulations.

Reference: The Board added sections 141 and 482 to Reference since this regulation makes these sections specific.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Objections or Recommendations/Responses

During the initial 45-day comment period, on April 28, 2020, the Board received a joint letter from 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, East Bay Community Law Center, Legal Aid at Work, Legal Services for Prisoners with Children, All of Us or None, Los Angeles Regional Reentry Project, National Association of Social Workers, California Chapter, REDF, The Record Clearance Project, San Jose State University, Root and Rebound, Rubicon Programs, and Underground Scholars Initiative on the Board's proposed regulations implementing Assembly Bill (AB) 2138. Below are the Board's responses to the comments made therein.

The Board did not receive any additional comments during the 15-day notice period.

Comment 1

Comment Summary:

This comment states that the proposed regulations leave some gaps in the regulatory scheme pursuant to the changes to Business and Professions Code (BPC) section 480, 481, 482, and 493 as modified by AB 2138. The comment states that the proposed regulations fail to meet and implement these statutes and are not valid. Additionally, the comment states that the proposed regulations fall short of the intent of the bill, which includes combating discrimination against people with records who have demonstrated rehabilitation and seek to establish themselves professionally.

Response:

The Board rejects this comment.

The purpose of the proposed regulations is to clarify substantial relationship criteria and criteria for rehabilitation, as required by AB 2138. (BPC, § 481.) Consistent with the requirements enacted by AB 2138, these regulations would adopt all of the following criteria, which would assist the Board in implementing 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 a registered nurse, or the license or certificate type sought or held by the person.

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.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Comment 2

Comment Summary:

The proposed regulations do not comply with AB 2138 because section 1444(c) lists certain acts or convictions and defines them as substantially related regardless of the time that has passed or the nature and gravity of the offense in contravention of BPC section 481.

Moreover, section 1444(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 result in the denial of a license.

Response:

The Board rejects this comment.

As explained below, the inclusion of each of these categories of conduct reflects a Board determination that they evidence the present or potential unfitness of a person holding a license or certificate to perform the functions authorized and/or mandated by the license or certificate. Passage of time does not lessen the qualitative nexus between a crime and a substantial relationship to the functions of a profession. While courts have looked to the type of work performed by a licensee in determining whether or not a nexus exists, they have not created time limits for when a crime becomes "no longer" related.

- (1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of the Nursing Practice Act and its implementing regulations.

The inclusion of this conduct is necessary because the requirements of registered nursing law are directly related to the duties of licensure. This conduct also constitutes cause for discipline under BPC section 2761(d). Therefore, to the extent a licensee violates these requirements, it evidences the unfitness of a person holding a license to perform the functions authorized and/or mandated by the license.

(2) Theft, dishonesty, fraud, deceit, or unprofessional conduct listed in section 2762 of the code.

Nurses often work in offices that receive federal funding and/or deal with insurance companies on a regular basis. Reporting of accurate services is a duty required by licentiates. Conduct involving fiscal dishonesty erodes trust that the services will be accurately billed to the appropriate parties. To enhance trust in the profession, theft, dishonesty, fraud, or deceit are deemed substantially related to the duties of licensure. For instance, a conviction for tax evasion / income tax fraud was considered related to the practice of medicine in *Windham v. Bd. of Med. Quality Assurance* (1980) 104 Cal. App. 3d 461; Medi-Cal fraud by a dentist was upheld as cause for revocation in *Hanna v. Dental Bd. of California* (2012) 212 Cal. App. 4th 759, 765, citing a previous medical board action:

Convictions for Medi-Cal fraud are substantially related to a professional's fitness or capacity to practice her profession. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305–306, 144 Cal.Rptr. 826 (*Matanky*) ["Intentional dishonesty ... demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine"].)

BPC section 2762 enumerates instances of unprofessional conduct relating to controlled substances or drugs. This statute reflects a Legislative determination that the enumerated acts pose a danger to the public and are sufficiently related to the duties, qualifications, and functions of a registered nurse to impose discipline.

(3) Child, elder, or dependent adult abuse.

Nursing services may be performed on vulnerable populations including children, dependent adults, and elderly individuals. A registered nurse occupies a position of trust over these individuals, and touches patients to perform nursing services. These categories of patients are particularly susceptible based on their ages and dependency. In addition, elder or dependent abuse includes financial abuse. (Welf. & Instns. Code, § 15610.30, subd. (a).) Nurses have access to property of others, including property of vulnerable patients. (*Moustafa v. Board of Registered Nursing*, supra, at p. 1140.) Given these circumstances, the Board has determined that any conviction or act of child, elder, or dependent adult abuse should be considered to be substantially related to the qualifications, functions, or duties involved in registered nursing.

(4) Sex offenses requiring a person to register as a sex offender pursuant to section 290 of the Penal Code.

Within the general provisions of the Healing Arts Division of the Business and Professions Code, section 726 was amended by AB 179 (Chapter 510, Statutes of 2015), to read: "(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division or under any initiative act referred to in this division." Nursing is a chapter in the Healing Arts Division, and so the article on Unprofessional Conduct applies.

For instance, in *Green v. Board of Dental Examiners* (1996), 47 Cal.App.4th 786, 800-01, a dentist's sexual conduct with patients was substantially related to his functions and duties as a dentist and thus warranted disciplinary action.

The disciplinary action against Green was premised on Section 726 which provided that "[t]he commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer which is substantially related to the qualifications, functions, or duties of the occupation for which a license was issued constitutes unprofessional conduct and grounds for disciplinary action...." (*Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, 594, 10 Cal.Rptr.2d 452.) "[S]ection 726, which is a licensing provision, allows the licensing authority to discipline a [dentist] who engages in sexual acts with a patient only if it is "substantially related to the qualifications, functions, or duties of the occupation for which a license was issued...." [Citation.] [Citation.] (*Id.* at p. 597, 10 Cal.Rptr.2d 452.)

"[T]he statute does not bar all sexual relations with a patient—only activity which is 'substantially related to the qualifications, functions, or duties of the occupation.'" (*Gromis* at p. 594, 10 Cal.Rptr.2d 452.) "Of course, nonconsensual sexual advances or touching has been upheld as a ground for discipline. [Citation.] Consensual sexual activity, too, has been found a legitimate basis for discipline when the sexual activity occurred under guise of treatment, as part of a physical examination, during psychiatric treatment or in exchange for drugs." (*Id.* at p. 595, 10 Cal.Rptr.2d 452.)

Nursing is often performed in a private room, where the consumer may be in some state of undress. A nurse is trusted to touch the consumer to administer care. Therefore, given the position of trust in which licentiates are held, the Board has determined that sex offenses which require a licentiate to register as a sex offender are substantially

related to the nature and duties involved in being a registered nurse. These acts void trust, and licentiates must be trustworthy.

(5) Lewd conduct or sexual misconduct.

16 CCR Section 1444.5 provides that certain acts of sexual contact and certain acts or convictions of sex offenses shall result in the revocation of a license. Therefore, the Board deems such acts to be directly related to the duties of licensure.

Furthermore, as discussed above, under BPC section 726(a), "[t]he commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division or under any initiative act referred to in this division." Nursing is a chapter in the Healing Arts Division, and so the article on Unprofessional Conduct applies.

In addition, a court of appeal has held that a dentist's sexual conduct with patients was substantially related to his functions and duties as a dentist and warranted disciplinary action. (*Green v. Board of Dental Examiners* (1996) 47 Cal.App.4th 786, 800-01 ["During the times he found the women most vulnerable, Green incorporated erotic and manipulative touching of intimate parts of their bodies into the treatments. He then violated the patients' trust and exceeded the scope of their consent for treatment by seducing them into a sexual relationship."].)

Similarly, nursing can be performed in a private room or a patient's home, where the consumer entrusts the nurse with certain types of examination with intimate parts of his or her body. Given these circumstances, the Board has determined that any conviction or act of lewd conduct or sexual misconduct should be considered to be substantially related to the qualifications, functions, or duties involved in registered nursing.

(6) Assault, battery, or other violence including, but not limited to, those violations listed in subdivision (d) of Penal Code section 11160."

As a healing art, governed in principle by the Hippocratic Oath to do no harm and trained in prevention, detection, intervention and treatment of addiction, client abuse, and family violence the Board has determined that any conviction or act involving assault, battery, or other violence, or furnishing of dangerous drugs or devices, is substantially related to the covenant not to harm fellow persons.

(7) Use of drugs or alcohol to an extent or in a manner dangerous to the individual or

the public.

This conduct, as a matter of law, is directly related to the duties of licensure. Under BPC Section 2762, the Legislature has determined that unprofessional conduct includes the use of alcoholic beverages in a manner dangerous or injurious to himself or herself. (Bus. & Prof. Code, § 2762, subd. (b).) In *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, for example, the court of appeal held that a nurse's conviction of driving with a blood alcohol of .08 or higher related to the practice of his profession and demonstrated an unfitness to practice that profession. The court held that "there is a nexus or logical relationship between the professional fitness of a registered nurse and the alcohol-related misconduct defined by section 2762, subdivisions (b) and (c). In light of this nexus, section 2762 comports with due process and supplies a basis for discipline even in the absence of a finding of professional unfitness in a particular case. The ALJ's finding that Sulla's conduct was not substantially related to his professional qualifications for purposes of the allegations under sections 490 and 2761, subdivision (f) cannot be used to circumvent the conclusive presumption that the conduct described by section 2762 amounts to unprofessional conduct." (*Id.*, pp. 1204-05; see also, *Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1421 ["[W]hile there must be a nexus or 'logical connection' between the type of misconduct that forms the basis for physician discipline and the ability of the physician to practice medicine, that nexus is established for constitutional purposes if the conduct enumerated, here the use of alcohol to the extent, or in such manner as to be dangerous or injurious to the licensee, or to any other person or to the public, is logically connected to a physician's fitness to practice medicine."]; *Krain v. Med. Bd.* (1999) 71 Cal.App.4th 1416, 1424 [whether a conviction is "substantially related" to professional qualifications is question of law, not fact].)

(8) Harassment, trespass, or stalking.

Nursing may be performed in intimate environments such as patients' residences. These types of patient examinations may place licensees in situations where they may have unmonitored access to patients and their living areas. This access may facilitate harassment, trespassing, or stalking. Given these circumstances, the Board has determined that any conviction or act of harassment, trespass, or stalking should be considered to be substantially related to the qualifications, functions, or duties involved in registered nursing because of these nurses' access to patients in these potentially unguarded situations.

Additionally, under BPC Section 822, the Board may revoke, suspend, place a licensee on probation, or take other appropriate action if the board "determines that its licentiate's

ability to practice his or her profession safely is impaired because the licentiate is mentally ill. ..." (Bus. & Prof. Code, § 820.) As acts of harassment, trespassing, or stalking can evidence mental illness, the Board has determined that any conviction or act of harassment, trespass, or stalking would be substantially related to the qualifications, functions, or duties involved in registered nursing.

(9) Failure to comply with any mandatory reporting requirements.

Under Penal Code section 11165.7, each person licensed by the Board is a "mandated reporter" for child abuse or neglect purposes. Prior to commencing his or her employment, and as a prerequisite to that employment, all mandated reporters must sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of section 11166 and will comply with those provisions. California Penal Code Section 11166 requires that all mandated reporters make a report to an agency specified in Penal Code Section 11165.9 [generally law enforcement agencies] whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter must make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter must prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. Because protection of the public is the Board's highest priority, the failure to report abuse and neglect is substantially related to the qualifications, functions, or duties involved in registered nursing. (Bus. & Prof. Code, § 2708.1.)

Passage of time, instead, would be reflected as a factor in rehabilitation. The Board incorporates herein by reference its response to Comment 8. As for the comment in the second paragraph, please see response to Comment 5.

Accordingly, the Board is making no changes to the regulations in response to this comment.

Comment 3:

Comment Summary:

Section 1445, as written, relies too heavily on law enforcement's reports and determination of the applicant's progress. Rehabilitation can and does take many forms

that the current language does not fully embrace. The comment refers the reader to Comment 8 for examples of rehabilitation to expand the proposed regulations.

Response:

The Board incorporates herein by reference its response to Comment 8.

Comment 4:

Comment Summary:

This comment requests the proposed language include a "7-year washout period" for consideration of convictions or discipline which are not statutorily considered serious felonies under Penal Code section 1192.7. (BPC, § 480, subd. (a)(1), effective July 1, 2020.)

Response:

The Board rejects this comment. Regulations should not indiscriminately incorporate statutory language. (Gov. Code, § 11349, subd. (f).)

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(a)(1)(A) and (B), effective July 1, 2020. As this is already included in statute, adding this provision is duplicative of section 480(a)(1). Therefore, it is not necessary to repeat it in the regulations.

Accordingly, the Board is making no changes to the regulations in response to this comment.

Comment 5

Comment Summary:

This comment states that the 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. (BPC, § 480, subds. (b)-(d).)

Response:

The Board rejects this comment. Regulations should not indiscriminately incorporate statutory language. (Gov. Code, § 11349, subd. (f).) BPC section 480(c), effective July 1, 2020, already states that a license may not be denied based on a conviction, or on the basis of the underlying acts, if it has been dismissed pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425, or otherwise dismissed or expunged. In addition, BPC section 480(b), effective July 1, 2020, 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(d), effective July 1, 2020, prohibits license denial based on an arrest that resulted in something other than a conviction, such as an infraction, citation, or juvenile adjudication. Since these provisions are already specifically addressed in statute, adding them again in regulation would be duplicative.

Accordingly, the Board is making no changes to the regulations in response to this comment.

Comment 6

Comment Summary:

This comment states that the regulations fail to state that the Board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. (BPC, § 480, subd. (f)(2).)

Response:

The Board rejects this comment. Section 480(f)(2), effective July 1, 2020, provides that a board cannot require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. As this is already provided by statute, adding this provision is duplicative of section 480(f)(2). Therefore, it is not necessary to repeat it in the regulations.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Comment 7

Comment Summary:

This comment states that the proposed language fails to include that the board must notify the applicant in writing if the applicant is denied a license or is disqualified from licensure. The comment states that the Board must provide procedures describing the process for an applicant to challenge a decision or request consideration, a procedure stating that the applicant has a right to appeal the Board's decision, and provide a process for requesting a complete conviction history. (BPC, § 480, subd. (f)(3).)

Response:

The Board rejects this comment.

BPC sections 480(f)(3), 485 through 487, and the Administrative Procedure Act, at Government Code section 11500, *et seq.*, already contain 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. Restating these requirements would be duplicative of the statutes. (Gov. Code, § 11349, subd. (f).)

Accordingly, the Board is making no changes to the regulations in response to this comment.

Comment 8

Comment Summary:

This comment 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 rehabilitation can and does take many forms that extend beyond law enforcement supervision. Therefore, the letter recommends that the Board 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.

Response:

The Board rejects this comment.

BPC section 482, effective July 1, 2020, 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.

The final text for proposed section 1445 articulates a two-step process for evaluating rehabilitation:

1. 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 section 1445 to help the Board determine whether sentence completion demonstrates rehabilitation. Criteria include the nature and gravity of the crime(s), the reason for granting probation and the length of the applicable parole or probation period(s), the extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified, the terms and conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, and the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification. If the Board finds rehabilitation, no further information needs to be provided.

2. The second step, if rehabilitation is not demonstrated based on sentence completion, requires the Board consider certain other criteria to evaluate rehabilitation. A general category permitting submission of any rehabilitation evidence allows an applicant to offer evidence relating to the proposed categories suggested above. As the Board can and already does give serious consideration to these factors when considering whether an individual is rehabilitated, the Board believes that the proposed language is consistent with legislative intent.

Accordingly, the Board is making no changes to the regulations in response to this comment.

Comment 9

Comment Summary:

The comment states that the proposed regulations fail to state the requirements set forth in BPC section 480(g)(2), effective July 1, 2020, including, that a board retain the number of applicants with a criminal record who received notice of denial or disqualification of licensure, the number of applicants with a criminal record who provided evidence of mitigation or rehabilitation, and the final disposition and demographic information.

Response:

The Board rejects this comment. These requirements are already set forth in statute. (BPC, § 480, subd. (g)(2), effective July 1, 2020.) Stating them in regulation would be duplicative of the statute. (Gov. Code, § 11349, subd. (f).)

Accordingly, the Board is making no changes to the regulations in response to this comment.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Nonduplication Statement - 1 CCR § 12

As stated throughout the Initial and Final Statements of Reasons, the proposed regulations partially duplicate or overlap several state statutes amended by the passage of AB 2138. In particular, AB 2138 amended Business and Professions Code sections 480 (grounds upon which a board can deny a license for applicants convicted of a crime or subject to formal discipline by a licensing board), 481 (the criteria boards can apply in determining if a crime bears a substantial relationship to the qualifications, functions or duties of the profession a board regulates), 482 (the rehabilitation criteria a board must consider when considering the denial, suspension or revocation of a license due to conviction of a crime), and 493 (the evidentiary effect of a conviction and criteria for determining if a crime has a substantial relationship to the profession). By repeating key language from these statutes within these regulations, the steps the Board will take, and the reasoning it will apply, the regulations become significantly clearer, and will better guide Board members, parties, administrative law judges, attorneys, and individuals with criminal convictions.

The changes made by AB 2138 and these regulations are directly applicable to individuals convicted of a crime who seek licensure, and to licensees who are convicted of a crime. As these regulations implement, interpret, and make specific how the laws amended by AB 2138 will be enforced by the Board, some duplication or overlap is necessary to ensure that the steps the Board must follow and the reasoning the Board must apply is clear and consistent with statute. The partial duplication or overlap with the statutes amended by AB 2138 are thus necessary to effectively implement the new standards in a way that satisfies the "clarity" standard of Government Code section 11349.1, subdivision (a)(3).

Economic Impact

The Board currently provides licensure to approximately 442,383 registered nurses in the state.

To the extent license applicants and licensees were convicted of a crime or were previously disciplined, the proposed regulations could impact individual licensees by authorizing individuals with criminal convictions to obtain licensure by the Board, if they have met the rehabilitative criteria, and the criminal convictions are not substantially related, as established in the regulatory proposal.

The proposed regulations may have an impact on businesses within California, specifically advanced practice nursing businesses, to the extent individual applicants

are able to be licensed under the proposal. By reducing barriers to licensure, it may create additional jobs for potential licensees that were unable to apply previously.

The Board historically denies approximately 13 initial applications per year and estimates a minimal number (range - zero to 4) of these applicants would attain initial licensure under the proposed regulations.

The Board notes, approved applicants would not incur additional costs related to initial licensure because they are required to pay a non-refundable initial application and license fee. These denied applicants do not receive a refund from the Board, so approved applicants would have no additional costs.

The Board estimates annual initial costs to applicants as follows:

Category	Applications Per Year	Fee Amount	Total Cost Per Year
Registered Nurse	4	\$0	\$0
Total Costs:			\$0

*Applicants pay a non-refundable application fee

Licensees will be required to pay ongoing biennial renewal fees of \$190 per individual as follows:

Category	Applications Per Year	Fee Amount	Total Cost Per Year
Registered Nurse	4	\$190	\$760
Total Costs:			\$760

The total economic impact is estimated to be up to approximately \$3,040 per year and \$15,200 over a ten-year period as follows:

AB 2138 Impact - Estimates Number of Additional Licensees Per Year													
License Type	Applicants Per Year	Fee Costs Per Year	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Registered Nurse - Biennial Renewal	4	\$190	\$ -	\$ -	\$760	\$760	\$1,520	\$1,520	\$2,280	\$2,280	\$3,040	\$3,040	\$15,200
Total Costs:			\$ -	\$ -	\$760	\$760	\$1,520	\$1,520	\$2,280	\$2,280	\$3,040	\$3,040	\$15,200

Fiscal Impact

The Board anticipates 4 additional initial license applications will be approved per year as a result of the proposed regulations. The Board indicates a Program Technician III will perform initial license workload, which is anticipated to take approximately 30 minutes per application at a cost of \$53 per application. Biennial renewal workload will be performed by a Program Technician and take approximately 15 minutes per application at a cost of approximately \$85 per application (licensing - \$25 plus enforcement-related - \$60).

Initial registration and renewal workload is estimated as follows:

AB 2138 Impact - Estimates Number of Additional Registrants and Licensees Per Year												
Registration and License Type	Applicants Per Year	Years Ongoing										Total
		1	2	3	4	5	6	7	8	9	10	
Registered Nurse	4	4	4	4	4	4	4	4	4	4	4	40
Initial License	4	4	4	4	4	4	4	4	4	4	4	40
Licensing Workload (30 minutes) - Program Technician II*		\$212	\$212	\$212	\$212	\$212	\$212	\$212	\$212	\$212	\$212	\$2,120
Total Initial Costs:		\$212	\$212	\$212	\$212	\$212	\$212	\$212	\$212	\$212	\$212	\$2,120
Biennial License Renewal		-	-	1	1	2	2	3	3	4	4	20
Licensing Workload (15 minutes) - Program Technician**	Various	-	-	\$25	\$25	\$50	\$50	\$74	\$74	\$99	\$99	\$495
Enforcement-related costs per licensee	\$60	-	-	\$60	\$60	\$120	\$120	\$180	\$180	\$240	\$240	\$1,200
Total Renewal Costs:		-	-	\$85	\$85	\$170	\$170	\$254	\$254	\$339	\$339	\$1,695
Total Initial and Renewal Costs:		\$212	\$212	\$297	\$297	\$382	\$382	\$466	\$466	\$551	\$551	\$3,815

*Program Technician II (approximately \$105 per hour - Includes DCA distributed costs)

**Program Technician (approximately \$99 per hour - Includes DCA distributed costs)

Enforcement Costs (\$33,481,000)/Licensee Population (559,824) = \$60 per licensee

Any workload and costs to process the initial and renewal applications will likely be absorbed within existing resources. The Board also anticipates any enforcement-related workload and costs to be minor and absorbable within existing resources.

The Board estimates minimal increased biennial license fee revenue of \$190 per licensee and up to approximately \$3,040 per year as a result of the proposed regulations.