

## TITLE 16. BOARD OF REGISTERED NURSING

### INITIAL STATEMENT OF REASONS

Hearing Date: April 29, 2020.

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

#### **Specific purpose of each adoption, amendment, or repeal:**

The Board of Registered Nursing (Board) regulates approximately 456,000 licensees. The Board protects and advocates for the health and safety of the public by ensuring the highest quality registered nurses in the state of California. The Board sets registered nursing educational standards, approves California nursing programs, evaluates licensure applications, issues and renews licenses, disciplines licensees for violations of the Nursing Practice Act, and manages an intervention program.

The proposed rulemaking consist of amendments to: (1) clarify 16 CCR Section 1441, relating to unprofessional conduct; (2) clarify 16 CCR Section 1444.5, relating to disciplinary guidelines; and (3) 16 CCR Sections 1444 and 1445, relating to substantial relationship and rehabilitation criteria which have been made necessary by the enactment of Assembly Bill 2138 (Chiu, Chapter 995, Statutes of 2018) (AB 2138).

#### **1. Unprofessional Conduct (16 CCR Section 1441)**

##### **Problem being addressed:**

Effective July 1, 2020, Business and Professions Code (BPC) Section 480(f)(2) will prohibit the Board from requiring an applicant to disclose or furnish documents related to criminal convictions.

16 CCR 1441(a) provides that the failure to timely provide requested documents to the board constitutes unprofessional conduct. The subsection does not state whether it applies to applicants for licensure or licensees, or both. The Board's regulation governing unprofessional conduct applies implicitly to licensees, but subdivision (a) does not state that explicitly, leaving room for confusion.

Purpose:

To comply with BPC Section 480(f)(2) and eliminate any ambiguity in the regulation, the proposed amendment clarifies that one must be a licensee for a failure to timely provide documents to constitute unprofessional conduct.

Benefits:

The proposed amendment provides greater clarity to licensees about whom is subject to section 1441(a).

Additionally, because an applicant is no longer required to disclose convictions or furnish documents related to criminal convictions, the Board will rely upon the background check information the Department of Justice and the Federal Bureau of Investigation provide when an applicant submits their fingerprints by LiveScan or hard card. If an applicant has a criminal record, the conviction will be screened to determine whether it may be considered under the provisions of AB 2138. If not, an applicant will not require an enforcement review which may expedite the application process.

Necessity:

The proposed amendment is necessary so that applicants and licensees understand whom is subject to section 1441(a) and for the regulation to comply with section 480(f)(2).

**2. Disciplinary Guidelines (16 CCR Section 1444.5)**

Problem being addressed:

The existing regulation cites the "Administrative Procedure Act (Government Code Section 11400 et seq.)" (APA), as the authority for a disciplinary action against a

licensee. It does not state that the relevant provisions in the APA for this purpose are the administrative adjudication provisions.

Purpose:

The proposed amendment would insert “administrative adjudication provisions of the” before “Administrative Procedure Act” in the regulation to clarify that the provisions referenced in the regulation are the administrative adjudication provisions of the APA.

Benefits:

The proposed amendment makes it clear to applicants, licensees, and the public that the administrative adjudication provisions of the APA govern decisions in a disciplinary action.

Necessity:

The APA contains different parts governing adjudication and rulemaking, and consequently, the current regulation can be confusing regarding which provisions govern discipline. The insertion of a “administrative adjudication provisions of the” before “Administrative Procedure Act” is necessary to clarify that the regulation is referring to the administrative adjudication provisions of the APA in making a decision on a disciplinary action under the APA.

**3. Substantial Relationship and Rehabilitation Criteria (16 CCR Sections 1444 and 1445)**

Problem being addressed:

Existing law provides for the licensure and regulation of various professions and vocations by boards and bureaus within the Department of Consumer Affairs (DCA), including the Board. It authorizes a board or bureau to deny, suspend or revoke a license or take disciplinary action against a license on the grounds that the applicant or licensee, has among other things, been convicted of a crime, as specified.

Signed by Governor Edmund G. Brown on September 30, 2018, AB 2138 amends, repeals, and adds Sections 7.5, 480, 480.2, 481, 482, 483, 488, 493, and 11345.2 of the BPC to revise and recast these provisions. The Legislature’s “clear intent” in enacting AB 2138 was “to reduce licensing and employment barriers for people who are rehabilitated.” (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.)

In accordance with AB 2138, by July 1, 2020, BPC Section 481 will require the Board 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. BPC section 493 will require the Board 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. The substantial relationship requirement stems from the due process principle that a statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448; *Moustafa v. Board of Registered Nursing*, supra, 29 Cal.App.5th at p. 1135.)

In addition, BPC section 482 will require the Board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. In the context of professional licensing decisions, courts have said that, “[r]ehabilitation . . . is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058, internal punctuation omitted.) The Legislature’s “clear intent” in enacting AB 2138 was “to reduce licensing and employment barriers for people who are rehabilitated.” (*Moustafa v. Board of Registered Nursing*, supra, 29 Cal.App.5th at p.1135.)

This regulatory proposal will make changes to existing regulations with respect to the substantial relationship of a crime and rehabilitation criteria to ensure the Board’s licensing activities are consistent with the changes set forth in AB 2138.

**Amend Section 1444 of Article 4 of Division 14 of Title 16 of the CCR (Substantial Relationship Criteria)**

## **Amend Section 1444(a)**

### Purpose:

Existing law at BPC Section 141 authorizes the Board 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 by the California license. In addition, section 480 will authorize the Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California for “professional misconduct” under specified conditions.

This proposal would add references to Section 141 (discipline by a foreign jurisdiction) and “professional misconduct” to the Board’s substantial relationship criteria regulation to more accurately reflect the Board’s authority to discipline or deny on these bases.

The Board’s existing substantial relationship criteria regulation sets forth what crimes or acts the board believes are logically connected to a registered nurse’s fitness or competence to practice the profession or to the qualifications, functions, or duties of the registered nurse license. The current standard specifies that a crime or act is considered substantially related “if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety or welfare.”

In the Board’s experience, this existing standard would be equally relevant when considering crimes, acts committed by a licensee in a foreign jurisdiction or professional misconduct committed by an applicant before another licensing board. As a result, these proposed changes are necessary to give proper notice to those affected applicants and licensees of what standard the Board will use in evaluating what professional misconduct or acts the board considers “substantially related,” and that could be a basis for license denial, suspension, or revocation by this Board pursuant to Business and Professions Code sections 141, 480, or 490.

Additional amendments include changing the word “registered nurse” to “person holding a license or certification under the Nursing Practice Act (Chapter 6 of Division 2 of the code)” as an individual may have advanced practice certifications (i.e. Clinical Nurse Specialist, Nurse Practitioner, Nurse Practitioner Furnishing, Nurse Anesthetist, Nurse

Midwife, Nurse Midwife Furnishing, Public Health Nurse, and/or Psychiatric Mental Health Nurse) in addition to having a registered nursing license.

The subsection would also be amended to reword and move to subsection (c) the phrase, “substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following...” Crimes, professional misconduct, or acts which the Board considers to be substantially related would be deleted from subsection (a), and included and supplemented in a new subsection (c).

Benefits:

The proposed revisions to section 1444(a) would provide clarity to applicants, licensees, and certificate holders that the Board is statutorily authorized to deny, suspend, or revoke a certificate, as applicable, on the basis of professional misconduct and discipline in an out-of-state jurisdiction. The proposal would also make aware relevant parties to any administrative appeal arising from a licensing decision (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent’s counsel) that when disciplining applicants or licensees for a criminal conviction, the Board is required to determine whether the act is substantially related to the practice of nursing using the listed criteria.

Necessity:

BPC Section 141 authorizes the Board to discipline a license on the basis of substantially related out-of-state discipline. BPC Section 480 also authorizes the Board to deny a license application on the basis of substantially related formal discipline by a licensing Board in or outside of California. The regulation seeks to implement, interpret, and make specific BPC sections 141 and 480 by adding their relative provisions to the Board’s substantial relationship criteria regulation. Accordingly, the proposal is necessary to provide the appropriate notice to applicants, licensees, and certificate holders that discipline in an out-of-state jurisdiction and professional misconduct are grounds for license and certificate denial, suspension, or revocation, and to implement the requirements of BPC sections 141 and 480.

Changing the language in this section from “registered nurse” to “person holding a license or certification under the Nursing Practice Act (Chapter 6 of Division 2 of the

code)” is necessary because existing language is only applicable to licensees despite a licensee’s ability to have advanced practice certifications also. Using the phrase “person holding a license or certification under the Nursing Practice Act (Chapter 6 of Division 2 of the code)” is necessary to ensure the public is aware that the provisions of this section are applicable to licensees and certificate holders alike.

### **Amend section 1444(b)**

#### Purpose:

The purpose of adding section 1444(b) is to implement AB 2138 and BPC Section 481, which requires each Board 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 boards.

#### Benefits:

The proposed revisions to section 1444(b) would provide clarity and transparency to applicants, licensees, and certificate holders by listing the specific criteria the Board must consider when making the substantial relationship determinations applicable to criminal convictions. The proposal would also make aware relevant parties to any administrative appeal arising from a certificate denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent’s counsel) of the specific criteria used by the Board to determine whether a criminal conviction is substantially related to the registered nursing profession.

#### Necessity:

Boards must consider these three criteria when evaluating whether a crime is “substantially related” to the regulated business or profession: “(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 in which the applicant seeks licensure or in which the licensee is licensed.” (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 Board to consider when making the

substantial relationship determination. This proposed addition is necessary to conform the regulation to statute.

### **Amend section 1444(c)**

#### Purpose:

The purpose of amending section 1444(c) is to provide that the Board considers certain acts or crimes to be substantially related to the qualifications, functions, or duties of a licensee or certificate holder. These acts and/or crimes include, but are not limited to, 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; child, elder, or dependent adult abuse; lewd conduct or sexual misconduct; use of drugs or alcohol to an extent or in a manner dangerous to the individual or the public; and harassment, trespass, or stalking. The proposal also makes amendments to clarify and expand the descriptions of existing crimes, misconduct, or acts.

#### Benefits:

The proposed revisions to section section 1444(c) would provide clarity to applicants, licensees, and certificate holders of the specific crimes, professional misconduct, or acts that the Board considers to be substantially related to the qualifications, functions, or duties of a registered nurse. The proposal would also make aware relevant parties to any administrative appeal arising from a certificate denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) that substantially related crimes, professional misconduct, and acts include the listed crimes, acts, or misconduct.

#### Necessity:

- (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 Board deems the requirements of registered nursing law to be 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) Child, elder, or dependent adult abuse

Under the proposed amendment, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences the present or potential unfitness of a licensee or certificate holder to perform the functions authorized and/or mandated by the license or certificate.

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.

(3) 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. 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.4<sup>th</sup> 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 services 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.

(4) 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].)

(5) Harassment, trespass, or stalking

Under the proposed amendment, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences the present or potential unfitness of a licensee to perform the functions authorized and/or mandated by the license.

Nursing services 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.

(6) Amendments to clarify and/or expand the descriptions of existing crimes, misconduct, or acts

- (a) "Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160," is amended in proposed subsection (c)(6) as "Assault, battery, or other violence including, but not limited to, those violations listed in subdivision (d) of Penal Code section 11160."

This amendment changes "assaultive or abusive conduct" to include the specific offenses of "assault" and "battery." Section 11160(d) defines the term "assaultive or abusive conduct" to include types of assault and battery as offenses. Therefore, the amendment does not substantively change the meaning of former subsection (a).

- (b) "Failure to comply with any mandatory reporting requirements," is re-

numbered as subsection (c)(9).

The language of this subsection is unchanged. It is moved to subsection (c) to the non-exclusive list of substantially related crimes, professional misconduct, or acts.

- (c) “Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code,” is amended as “Sex offenses requiring a person to register as a sex offender pursuant to section 290 of the Penal Code,” in subsection (c)(4).

This amendment does not substantively change the meaning of former subsection (d). The relevant conviction or acts are still defined by reference to Penal Code Section 290.

- (d) “Theft, dishonesty, fraud, or deceit,” is amended as “Theft, dishonesty, fraud, deceit, or unprofessional conduct listed in section 2762 of the code,” in subsection (c)(2).

This amendment adds unprofessional conduct to the categories of conduct deemed to be substantially related to the qualifications, functions or duties of a registered nurse. 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 as to impose discipline.

### **Section 1444 Note**

The Board proposes to add BPC Sections 141, 490, and 493 as “Reference.” Since a substantially related crime, act, or professional misconduct as defined in Section 1444 would be a basis for imposing discipline or denying an application pursuant to Business and Professions Code Sections 141, 490, and 493, the Board proposes to add these sections of the Business and Professions Code to the “Reference” section of this regulation to comply with the the APA.

### **Amend Section 1445 of Article 4 of Division 14 of Title 16 of the CCR (Criteria for Rehabilitation)**

## **Amend section 1445(a)**

### Purpose:

The purpose of amending section 1445(a) is to comply with the requirements of AB 2138, section 9, and BPC section 482(b)(1), which requires the Board 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 also provides a specific list of criteria for the Board 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 Board to consider rehabilitation in the narrow context of an applicant who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under the DCA.

### Benefits:

The proposed revisions to section 1445(a) would provide transparency and clarity to applicants who have completed their criminal sentence without a violation of parole or probation. Providing the narrow list of rehabilitation criteria would help these persons understand the facts and documents to present to the Board to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal arising from a certificate denial (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, applicants who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria applicable to applicants.

### Necessity:

Existing law requires Boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying or disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) A Board may not deny an applicant a license based solely on a misdemeanor conviction, if the applicant met the applicable requirements of the criteria of rehabilitation that the Board developed. (BPC, § 480, subd. (b).)

Operative July 1, 2020, BPC section 480 will prohibit the Board from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or on the basis of the facts underlying a conviction, if the applicant “made a showing of rehabilitation pursuant to Section 482.” (BPC, § 480, subd. (b), as added by AB 2138, § 4.) In deciding whether to deny a license based on a conviction, the Board must consider evidence of the applicant’s rehabilitation, pursuant to the process established in the Act, or its regulations, and as directed under BPC section 482. (BPC, § 481, subd. (c), as added by AB 2138, § 7; see also BPC, § 493, subd. (b)(2), as added by AB 2138, § 13 [“A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation”].)

To implement AB 2138, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to deny a license based on a criminal conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.) The Board must also decide whether an applicant “made a showing of rehabilitation,” if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subd. (b), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when denying a license. The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Board in evaluating rehabilitation. (16 CCR § 1445, subd. (a)(4).) But courts have historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the Board must now consider whether an applicant who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

The proposal specifies the following criteria for the Board to consider when making the determination that the applicant who has successfully completed the criminal sentence has made a showing of rehabilitation: (1) the nature and gravity of the crime(s); (2) (2) the reason for granting probation and the length 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 conditions of parole, or probation, and the extent to which they bear on the applicant's rehabilitation; and (5) the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

The criteria are necessary to assist the Board in evaluating rehabilitation. Since the purpose of evaluating an applicant's rehabilitation is to determine whether the applicant is sufficiently reformed to be licensed, but AB 2138 requires the Board to evaluate rehabilitation in the narrow context of an applicant who completed the criminal sentence without violating parole or probation, each of these criteria are narrow in scope and would provide to the Board information specific to the applicant's criminal sentence and terms or conditions of parole or probation, so that the Board knows the relevant criteria it must consider to make the determination as to the applicant's rehabilitation.

The Board will consider the nature and gravity of the crime, because this is the offense against which the applicant's rehabilitative efforts will be evaluated. The Board proposed changing the term "severity" to "gravity" to be consistent with proposed section 1444(b)(1).

The Board will consider reasons for granting probation and the length of the applicable parole or probation period, because the reasons and 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. (*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 Board will 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 Board will consider the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, because the actual parole or probation terms can inform the Board on whether the applicant is rehabilitated. 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. (*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"].)

The Board will 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 Board's determination. For instance, if correctional authorities removed terms of parole or probation due to the applicant's good behavior, this would bear on the Board's evaluation of the applicant's rehabilitation and willingness to conform to the rules of licensure.

Changing the word "eligibility" to "fitness" is necessary to convey to applicants that the Board must determine if an applicant is suitable to practice registered nursing, versus an applicant only satisfying a set of conditions (i.e. being eligible to practice nursing).

### **Amend section 1445(b)**

#### Purpose:

The purpose of amending section 1445(b) is to comply with the requirements of AB 2138, section 9, and BPC section 482(b)(2), which requires the Board to consider whether an applicant has made a showing of rehabilitation if: (1) the applicant has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Board does not find that the applicant made a sufficient showing of rehabilitation based on the narrow criteria in subsection (a); or, (3) the denial is based on something other than a crime, such as professional misconduct. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also provides a specific, more comprehensive, list of criteria for the Board to consider for these applicants, which is not limited to the

applicable parole or probation. The list of criteria incorporates the criteria from subsection (a) for applicants convicted of a crime, so that similarly-situated applicants have the opportunity to be evaluated by the Board under the same set of criteria. The list of criteria also anticipates that the Board may be considering “act(s)” that are the basis for the denial, since the Board may be evaluating the rehabilitation of an applicant where the ground for denial involves acts of professional misconduct, rather than a conviction. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under DCA.

#### Benefits:

The proposed revisions to section 1445(b) would provide transparency and clarity to applicants who have not completed their criminal sentence without a violation of parole or probation or otherwise do not qualify for consideration under subsection (a). Providing the list of rehabilitation criteria would help applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal arising from a certificate denial (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant’s counsel) in advocating for or against, or deciding upon, applicants who do not qualify for consideration under subsection (a), by listing rehabilitation criteria applicable to the applicant.

#### Necessity:

Existing law required Boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying a license based on a conviction, acts of dishonesty, fraud, or deceit, or acts that would be grounds for discipline, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) A Board may not deny an applicant a license based solely on a misdemeanor conviction, if the applicant met the applicable requirements of the criteria of rehabilitation that the board developed. (BPC, § 480, subd. (b).)

Operative July 1, 2020, BPC section 480 will prohibit the Board from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or on the basis of the facts underlying a conviction, if the applicant “made a showing of rehabilitation pursuant to Section 482.” (BPC, § 480, subd. (b), as added by AB 2138, § 4.) In deciding whether to deny a license based on a conviction, the Board must consider evidence of the applicant’s rehabilitation, pursuant to the process established

in the Act, or its regulations, and as directed under BPC section 482. (BPC, § 481, subd. (c), as added by AB 2138, § 7; see also BPC, § 493, subd. (b)(2), as added by AB 2138, § 13 [“A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation”].)

To implement AB 2138, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to deny a license based on a conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.) The Board must also decide whether an applicant or licensee “made a showing of rehabilitation,” if the applicant did not complete the criminal sentence at issue without a violation of parole or probation, or the board finds, in applying its rehabilitation criteria, that the applicant is rehabilitated. (BPC, § 482, subd. (b), as added by AB 2138, § 9.) AB 2138 also authorized the Board to deny a license based on prior disciplinary misconduct. Accordingly, it is necessary to amend the regulation to account for denials on this ground.

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when denying a license. The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Board in evaluating rehabilitation. (16 CCR, § 1445, subd. (a)(4).) But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance*, supra, at p.473; see also *In re Gossage*, at 23 Cal.4th p. 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the Board must now consider whether an applicant who has complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria. If, however, the applicant did not comply with the terms of parole or probation, the Board would apply its standard rehabilitation criteria, as modified in this proposal.

The proposal uses the existing rehabilitation criteria with the addition of the criteria specified in section 1445(a) and makes other minor revisions. Each of these criteria are designed to focus the Board's evaluation on facts and circumstances relevant to an applicant's rehabilitation, so that the Board knows the relevant criteria it must review to make the determination as to the applicant's rehabilitation.

The Board 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 misconduct against which the Board will judge the applicant's rehabilitation. This is also already an existing regulatory criterion. This is not a substantive change and would make the regulation internally consistent.

The Board 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 Board's decision regarding whether the applicant is sufficiently rehabilitated to be licensed and conform to the requirements of licensure.

The Board will consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person's rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation. This criterion has not changed substantively from existing regulation.

The Board will consider whether the applicant complied with parole, probation, restitution or other sanctions imposed on the applicant. The information embraced in this 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. Accordingly, it is necessary for the Board to consider these elements to evaluate an applicant's reformation from prior misconduct.

The Board will also consider the criteria in subsection (a). This is necessary to ensure that all applicants convicted of a crime have the opportunity to be evaluated under the same set of rehabilitation criteria. For applicants that completed their criminal parole or probation without a violation, the Board would first evaluate their eligibility for licensure under the criteria in subsection (a). If the applicant did not demonstrate sufficient rehabilitation under the criteria in subsection (a), the Board would apply the broader criteria in subsection (b). For applicants that did not complete their criminal parole or

probation without a violation, the Board would apply the criteria in subsection (b), which incorporates the criteria from subsection (a). This way, similarly-situated applicants (those being considered for denial based on a conviction) have the benefit of the same set of criteria.

The Board would consider rehabilitation evidence the applicant submitted. The Board is required to consider such evidence under BPC section 481(c). It is necessary to retain this requirement in order to consolidate the Board's rehabilitation criteria in one place. Moreover, public safety is the Board's top priority. (Bus. & Prof. Code, § 2708.1.) Thus, the Board will evaluate rehabilitation evidence with an eye toward whether it shows the applicant's conduct over that time demonstrates a readiness to practice in a manner that will not harm the public. The Board will also evaluate rehabilitation evidence to ensure the applicant understands the harm he or she previously caused and whether the applicant is remorseful. "Fully acknowledging the wrongfulness of [the applicant's] actions is an essential step towards rehabilitation." (*Seide v. Com. of Bar Examiners* (1989) 49 Cal.3d 933, 940; see also, *In re Conflenti* (1981) 29 Cal.3d 120, 124-25 [remorse and sustained good conduct are signs of rehabilitation and fitness to practice]; *In re Menna* (1995) 11 Cal.4<sup>th</sup> 975, 991 [same].) It is necessary to describe what the Board expects with respect to rehabilitation evidence to guide applicants in presenting evidence that fully demonstrates rehabilitation.

### **Amend section 1445(c)**

#### Purpose:

The purpose of amending section 1445(c) is to comply with the requirements of AB 2138, section 9, and BPC section 482(b)(1), which requires the Board to consider whether a licensee or certificate holder 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 Board to consider for these persons. For uniformity purposes, the proposal follows the same approach as subsection (a). 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 Board to consider rehabilitation in the narrow context of a licensee who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the

disciplinary process and uniformity of rehabilitation criteria with other boards under DCA.

Benefits:

The proposed revisions to section 1445(c) are intended to provide transparency and clarity to licensees and certificate holders who have completed their criminal sentence without a violation of parole or probation. Providing the narrow list of rehabilitation criteria would help licensees and certificate holders understand the facts and documents to present to the Board to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, licensees and certificate holders who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria applicable to the licensee or certificate holder.

Necessity:

Existing law required Boards to develop criteria to evaluate the rehabilitation of a licensee when considering disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) To implement AB 2138 and maintain consistency in how the Board evaluates rehabilitation evidence between license denials and discipline, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to suspend or revoke a license or certificate based on a conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when suspending or revoking a license. It requires the Board to decide whether an applicant or licensee "made a showing of rehabilitation" in two circumstances: (1) the licensee completed the applicable criminal sentence without a violation of parole or probation, or (2) the Board finds, after applying its rehabilitation criteria, that the applicant is rehabilitated. (BPC, § 482, as added by AB 2138, § 9.)

The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently

considered by the Board in evaluating rehabilitation. (16 CCR § 1445, sub. (b)(4).) But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance*, supra, at p. 473; see also *In re Gossage*, supra, 23 Cal.4th at p. 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the Board must now consider whether a licensee who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

The proposal specifies the following criteria for the Board to consider when making the determination that the licensee or certificate holder who has successfully completed the criminal sentence has made a showing of rehabilitation: (1) the nature and gravity of the crime(s); (2) the reasons for granting probation and 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 licensee’s rehabilitation; and (5) the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification. The criteria are necessary to assist the Board in evaluating rehabilitation.

Since the purpose of evaluating a licensee or certificate holder’s rehabilitation is to determine whether the individual is sufficiently reformed to be licensed, but AB 2138 requires the Board to evaluate rehabilitation in the narrow context of a licensee who completed the criminal sentence without violating parole or probation, each of these criteria are narrow in scope and would provide to the Board information specific to the criminal sentence and terms or conditions of parole or probation, so that the Board knows the relevant criteria it must consider to make the determination as to rehabilitation. In addition, to provide consistency with how the Board considers rehabilitation criteria, and uniformity with other DCA boards, the proposed criteria were adopted by the Board pursuant to DCA’s recommended rehabilitation criteria.

The Board will consider the nature and gravity of the crime, because this is the offense against which the licensee’s rehabilitative efforts will be evaluated. The Board proposed using the term “gravity” to be consistent with proposed section 1444(b)(1) and this section. The Board will consider the reason for granting probation and the length of the applicable parole or probation period, because the length of time that the licensee served probation or parole without a violation is relevant to whether the licensee is rehabilitated and will comply with licensure requirements in the future. (*In re Conflenti*, supra, 29 Cal.3d 120 at pp.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 Board will 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 licensee is sufficiently rehabilitated.

The Board will consider the terms or conditions of parole or probation and the extent to which they bear on the licensee’s rehabilitation, because the actual parole or probation terms can inform the Board on whether the licensee is rehabilitated. For instance, in cases where a licensee was convicted of a crime involving alcohol, probation terms requiring the licensee to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the licensee’s rehabilitation. (*In re Billings*, supra, 50 Cal.3d at p. 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”].)

The Board will 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 Board’s determination. For instance, if correctional authorities removed terms of parole or probation due to the licensee’s good behavior, this would bear on the Board’s evaluation of the certificate holder’s rehabilitation and willingness to conform to the rules of licensure.

### **Amend section 1445(d)**

#### Purpose:

The purpose of amending section 1445(d) is to conform to changes the Board proposes to implement AB 2138, section 9, and BPC section 482(b)(2), which require the Board to consider whether an applicant or licensee has made a showing of rehabilitation if: (1) the applicant or licensee has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Board does not find that the applicant made a sufficient showing of rehabilitation based on a narrow set of criteria; or, (3) the Board's decision is based on something other than a crime. Likewise here, the Board would consider the rehabilitation criteria in subsection (d) if: (1) a licensee has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Board does not find that the licensee made a sufficient showing of rehabilitation based on the narrow criteria in subsection (c); or, (3) the Board's decision is based on something other than a crime, such as out-of-state discipline under BPC Section 141.

As AB 2138 does not prescribe new rehabilitation criteria, the proposal also seeks to provide a specific, more comprehensive list of criteria for the Board to consider for licensees and/or certificate holders, which is not limited to the person's parole or probation. The list of criteria is mostly unchanged from existing regulation, and it anticipates that the Board may be considering "act(s)" that are the basis for discipline, since the Board may, for instance, be evaluating the rehabilitation of a licensee where the ground for discipline involves disciplinary acts in other states. The list of criteria incorporates the criteria from subsection (c) for licensees convicted of a crime, so that similarly-situated licensees have the opportunity to be evaluated by the Board under the same set of criteria. This proposal is also intended to provide predictability and consistency in the licensing and disciplinary process, and uniformity of rehabilitation criteria with other boards under DCA. Thus, the proposal follows the same approach as subsection (b).

### Benefits:

The proposed revisions to section 1445(d) would provide transparency and clarity to licensees and/or certificate holders who have not completed their criminal sentence without a violation of parole or probation, or otherwise do not qualify for consideration under subsection (c). Providing the list of rehabilitation criteria would help licensees understand the facts and documents to present to the Board to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal (e.g., the Deputy Attorney General, the Administrative Law Judge, and the

certificate holder's counsel) in advocating for or against, or deciding upon, certificate holders who do not qualify for consideration under subsection (c), by listing rehabilitation criteria applicable to the licensee.

Necessity:

Existing law required Boards to develop criteria to evaluate the rehabilitation of a licensee when considering disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) To implement AB 2138 and maintain consistency in how the Board evaluates rehabilitation between license denials and discipline, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to suspend or revoke a license based on a conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when suspending or revoking a license. It requires the Board to decide whether an applicant or licensee “made a showing of rehabilitation” in two circumstances: (1) the licensee completed the applicable criminal sentence without a violation of parole or probation, or (2) the board finds, after applying its rehabilitation criteria, that an applicant is rehabilitated. (BPC, § 482, as added by AB 2138, § 9.)

The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Board in evaluating rehabilitation. (16 CCR § 1445, sub. (b)(4).) But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance*, supra, at p. 473; see also *In re Gossage*, supra, 23 Cal.4th at p. 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the Board must now consider whether a licensee and/or certificate holder who has complied with the terms of parole

or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria. If, however, the licensee and/or certificate holder did not comply with the terms of parole or probation, the Board would apply its standard rehabilitation criteria, as modified in this proposal.

The proposal uses the criteria specified in subdivision (c) and makes other minor revisions. Each of these criteria are designed to focus the Board's evaluation on facts and circumstances relevant to a licensee's rehabilitation, so that the Board knows the relevant criteria it must review to make the determination as to the licensee and/or certificate holder's rehabilitation. In addition, to provide uniformity with other DCA boards, the proposed criteria were adopted by the Board pursuant to DCA's recommended rehabilitation criteria.

The Board will consider the nature and gravity of the crime or act for the same reasons as discussed for subsections (b) and (c). This is the offense or misconduct against which the Board will judge the certificate holder's rehabilitation.

The Board will also consider evidence of the licensee and/or certificate holder's total criminal record. This is an existing regulatory criterion. It is necessary for the Board to consider the licensee's total criminal record because additional prior or subsequent misconduct by the licensee is relevant to the Board's decision regarding whether the licensee and/or certificate holder is sufficiently rehabilitated to hold a license and/or certificate and his or her willingness to conform to the requirements of licensure.

The Board will consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person's rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation. This criterion has not changed substantively from existing regulation.

The Board will consider whether the person complied with parole, probation, restitution or other sanctions imposed on the licensee. This is an existing regulatory criterion. The information embraced in this criterion bears on a person's rehabilitation in terms of the his or her willingness to make amends from prior misconduct and to conform to the rules of licensure. Accordingly, it is necessary for the Board to consider these elements to evaluate a person's reformation from prior misconduct.

The Board will also consider the criteria in subsection (c). This is necessary to ensure that all persons to have the opportunity to be evaluated under the same set of rehabilitation criteria. For licensees that have completed their criminal parole or probation without a violation, the Board would first evaluate their eligibility for licensure under the criteria in subsection (c). If the licensee did not demonstrate sufficient rehabilitation under the criteria in subsection (c), the Board would apply the broader criteria in subsection (d). For licensees that did not complete their criminal parole or probation without a violation, the Board would apply the criteria in subsection (d), which incorporates the criteria from subsection (c). This way, similarly-situated licensees (those being considered for discipline based on a conviction) have the benefit of the same set of criteria.

The Board would consider evidence that a person's conviction was dismissed pursuant to Penal Code section 1203.4. This is an existing regulatory requirement, and it is necessary to consider dismissal proceedings because they are relevant to the Board's evaluation of whether a licensee is rehabilitated. The word "expungement" would be amended to "dismissal," but this is not a substantive change. Dismissal is simply a more accurate description of the proceedings conducted under Penal Code section 1203.4. (*Moustafa v. Board of Registered Nursing*, supra, 29 Cal.App.5th at p. 1129, fn.5.)

The Board would also consider rehabilitation evidence the person submitted. This is an existing regulatory criterion. It is necessary to retain this requirement in order to maintain consistency between the Board's evaluation of rehabilitation in the licensing and discipline context. Moreover, public safety is the Board's top priority. (Bus. & Prof. Code, § 2708.1.) Thus, the Board will evaluate rehabilitation evidence with an eye toward whether it shows the applicant's conduct over that time demonstrates a readiness to practice in a manner that will not harm the public. The Board will also evaluate rehabilitation evidence to ensure the applicant understands the harm he or she previously caused and whether the applicant is remorseful. "Fully acknowledging the wrongfulness of [the applicant's] actions is an essential step towards rehabilitation." (*Seide v. Com. of Bar Examiners* (1989) 49 Cal.3d 933, 940; see also, *In re Conflenti* (1981) 29 Cal.3d 120, 124-25 [remorse and sustained good conduct are signs of rehabilitation and fitness to practice]; *In re Menna* (1995) 11 Cal.4th 975, 991 [same].) It is necessary to describe what the Board expects with respect to rehabilitation evidence to guide applicants in presenting evidence that fully demonstrates rehabilitation.

## **Section 1445 Note**

The Board proposes to add BPC Sections 480 and 482 as “Reference.” Under section 480, a person may not be denied a license on the basis of a conviction or acts underlying a conviction, if he or she has made a showing of rehabilitation under BPC Section 482. Therefore, section 1445 implements, interprets, and/or makes specific section 480. Under BPC section 482, the Board must develop criteria to evaluate the rehabilitation of a person when considering denial or discipline of a license. Therefore, section 1445 implements, interprets, and/or makes specific section 482.

### **Technical, Theoretical, and/or Empirical Study, Reports or Documents:**

The Board has relied on data from the following:

California Board of Registered Nursing, Board Meeting Agenda – April 10-11, 2019; Administrative Committee Agenda Item Summary 6.2, April 11, 2019; and Board Meeting Minutes, April 10-11, 2019.

<https://rn.ca.gov/consumers/pastmtgs.shtml>

### **Specific Technologies or Equipment:**

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

### **Economic Impact Assessment:**

This regulatory proposal will have the following effects:

- It may create jobs within the state of California to the extent that potential licensees were not able to apply previously because of license barriers and now can. It will not eliminate any jobs because it seeks to reduce barriers to licensure for applicants with criminal or disciplinary history.
- It may create new business within the state of California to the extent that potential licensees were not able to apply previously because of license barriers and now can. It will not eliminate any businesses because it seeks to reduce barriers to licensure for applicants with criminal or disciplinary history.

- It may affect the expansion of businesses currently doing business within the state of California to the extent that potential licensees were not able to apply previously because of license barriers and now can.
- This regulatory proposal will benefit the health and welfare of California residents because by implementing criteria that emphasize rehabilitative efforts, it 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 registered nurses in the marketplace, therefore allowing for more health care providers to treat increasing numbers of California consumers.
- This regulatory proposal will not affect worker safety because the proposal does not involve worker safety.
- This regulatory proposal will not affect the state's environment because it does not involve environmental issues.

### **Alternatives to the Proposed Actions:**

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

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

- Option 1: To pursue a regulatory change that requires the Board to find rehabilitation if the applicant, licensee, or certificate holder completed the terms of their criminal probation or parole. Courts give little weight to the fact that an individual did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Board believes that reviewing each individual on the basis of multiple criteria is the better indicator whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Board rejected this option.

- Option 2: Do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because per AB 2138, the Board is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the Board in writing relevant to the above determinations at Board of Registered Nursing, 1747 N. Market Blvd., Suite 150 Sacramento, CA 95834-1924.