



## MEMORANDUM

<b>DATE</b>	January 23, 2019
<b>TO</b>	Veterinary Medical Board
<b>FROM</b>	Jessica Sieferman, Executive Officer
<b>SUBJECT</b>	<b>Agenda Item 8.E - Sections 2040 and 2041, Article 5, Division 20, Title 16 of the CCR to Comply with the Requirements of Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018) Regarding Criminal Conviction Substantially Related and Rehabilitation Criteria</b>

### **Background:**

As previously reported [here](#), [AB 2138](#) amended several sections of the Business and Professions Code related to how regulatory licensing boards respond to applicants with criminal convictions. This bill generally removes the Board's authority to deny an application based on formal discipline by a licensing board in or outside of California or criminal convictions and underlying acts occurring over seven years ago. The bill also requires each board to develop criminal conviction substantially related and rehabilitation criteria by July 1, 2020.

During the November meeting, the Board was informed that, due to the time requirements to implement the regulations, the Department of Consumer Affairs (DCA) developed an AB 2138 project plan to meet the July 2020 deadline. Per the project plan, the Board needs to approve regulatory language by April 2019.

The Board created a subcommittee to assist with AB 2138 implementation. Since then, DCA has been diligently working with the Attorney General's Office (AG) and the Office of Administrative Law (OAL) to develop template regulatory language for all programs. DCA anticipates finalizing the language shortly.

In the meantime, legal counsel drafted the attached language for Board consideration. The language was modeled after draft template language currently being reviewed by the AG and OAL. If DCA makes changes prior to the meeting, Board staff will provide the updated language to the members.

**Action Requested:**

Please review and consider approving the proposed regulatory changes implementing AB 2138.

**Attachment:**

- Proposed amendments to CCR sections 2040 (Substantial Relationship Criteria) and 2041 (Criteria for Rehabilitation)

**California Code of Regulations**  
**Title 16. Professional and Vocational Regulations**  
**Division 20. Veterinary Medical Board**

PROPOSED LANGUAGE

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

Article 5

§ 2040. Substantial Relationship Criteria.

(a) For the purposes of denial, suspension, or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a person holding a license under Chapter 11 of Division 2 of the code if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his or her the license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(b) In making the substantial relationship determination required under subsection (a) for a crime, the board shall consider the following criteria:

- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of a person holding the license.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

- (a1) 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 Chapter 11, Division 2 of the code or other state or federal laws governing the practice of veterinary medicine.
- ~~(b2) Conviction of a crime involving fiscal dishonesty.~~

Note: Authority cited: Sections 481, 493, 4808, Business and Professions Code.  
Reference: Sections 141, 480, 481, 488, 490, and 492, and 493, Business and Professions Code.

§ 2041. Criteria for Rehabilitation. **[Option 1]**

(a) When considering the denial of a license under Section 480 of the code on the ground that the applicant was convicted of a crime, the board shall consider whether the

**Commented [WT1]:** Option 1 allows the Board to consider rehabilitation on a case by case basis. Option 2 below requires the Board to find rehabilitation if the applicant completed their terms of their criminal probation/parole.

applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) If ~~subdivision~~ subsection (a) is inapplicable, or the board determines that the applicant did not make the  requisite showing of rehabilitation based solely on the criteria in subdivision subsection (a), the board shall apply the following criteria in evaluating an applicant's rehabilitation. The Board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license will consider the following criteria, the board finds that the applicant is rehabilitated:

- (1) The nature and ~~severity~~ gravity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial ~~which also could be considered as grounds for denial~~ under Section 480 of the code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in ~~subdivision paragraph~~ (1) or (2).
- (4) ~~The extent to which~~ Whether the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) The criteria in subsection (a)(1)-(5), as applicable.
- (6) Evidence, if any, of rehabilitation submitted by the applicant.

**Commented [WT2]:** Changing to gravity for conformity with AB 2138.

~~(b)~~ (c) When considering the suspension or revocation of a license on the ground that a person holding a license under Chapter 11 of Division 2 of the code has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation and is presently eligible for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall, ~~shall in evaluating the rehabilitation of such person and his or her eligibility for a license will~~ consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(d) If subsection (c) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subsection (c), the board shall apply the following criteria in evaluating the licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:

- (1) Nature and ~~severity~~gravity of the act(s) or ~~offense~~crime(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or ~~offense~~crime(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of ~~expungement~~dismissal proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

(ee) When considering a petition for reinstatement of license under the provisions of Section 11522 of the Government Code, the board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in subsection (a) of this section.

Note: Authority cited: Sections 482 and 4808, Business and Professions Code.  
Reference: Sections 475, 480, 481 and 482, 488, 490, and 493, Business and Professions Code.

§ 2041. Criteria for Rehabilitation. [Option 2]

(a) When considering the denial of a license under Section 480 of the code on the ground that the applicant was convicted of a crime, the board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation.

**Commented [WT3]:** Option 1 allows the Board to consider rehabilitation on a case by case basis. Option 2 below requires the Board to find rehabilitation if the applicant completed their terms of their criminal probation/parole.

(b) If ~~subdivision~~subsection (a) is inapplicable, the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license will consider the following criteria, the board finds that the applicant is rehabilitated:

- (1) The nature and ~~severity~~gravity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial ~~which also could be considered as grounds for denial~~ under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in ~~subdivision paragraph~~ (1) or (2).

(4) ~~The extent to which~~ Whether the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

~~(bc)~~ When considering the suspension or revocation of a license on the ground that a person holding a license under Chapter 11 of Division 2 of the code has been convicted of a crime, the board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation, ~~shall in evaluating the rehabilitation of such person and his or her eligibility for a license will consider the following criteria:~~

(d) If subsection (c) is inapplicable, the board shall apply the following criteria in evaluating the licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:

(1) Nature and ~~severity~~ gravity of the act(s) or ~~offense~~ crime(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or ~~offense~~ crime(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of ~~expungement~~ dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

~~(ee)~~ When considering a petition for reinstatement of license under the provisions of Section 11522 of the Government Code, the board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in subsection (a) of this section.

Note: Authority cited: Sections 482 and 4808, Business and Professions Code.  
Reference: Sections 475, 480, 481 and 482, 488, 490, and 493, Business and Professions Code.