

Naturopathic Medicine Committee

Department of Consumer Affairs

Initial Statement of Reasons

Hearing Date: No hearing has been scheduled for the proposed action.

Subject Matter of Proposed Regulations: Substantial Relationship Criteria; Criteria for Rehabilitation – Denial of Licensure; Criteria for Rehabilitation – Suspension or Revocation; Required Actions Against Registered Sex Offenders.

Sections Affected: Sections 4256, 4258, and 4259 of Article 9 of Division 40 of Title 16 of the California Code of Regulations (CCR).

Specific Purpose of Each Adoption

1. Problem Being Addressed

The Naturopathic Medicine Committee (Committee) licenses naturopathic doctors, who are licensed health care practitioners that provide health care services. The Committee also provides certificates in naturopathic childbirth attendance.

Existing law (Business and Professions Code (BPC) section 141) authorizes the Board to discipline a licensee on the basis of substantially related out-of-state discipline. BPC sections 480 and 490 authorize the Committee to deny an application for licensure or discipline a licensee based on a conviction for a crime or act substantially related to the licensed business or profession. BPC section 481 authorizes the Committee to develop criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of the profession. BPC section 482 requires the Committee to develop criteria to evaluate an applicant's or licensee's rehabilitation when considering the denial of a license, the discipline of a licensee, or a petition for reinstatement of a license.

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

Effective July 1, 2020, BPC section 481, subdivision (b) will require the Committee to amend its substantial relationship criteria regulations to include:

- The nature and gravity of the offense;
- The number of years elapsed since the date of the offense; and

- The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

The proposed regulatory amendments also add references to “professional misconduct,” as professional misconduct resulting in formal discipline may be considered a legal basis for denial under BPC section 480. The proposed language adds references to discipline under BPC section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under that section.

The Committee also proposes to add new rehabilitation criteria to help the Committee consider whether an applicant or licensee has made a “showing of rehabilitation” consistent with the requirements of AB 2138 (BPC sections 480, 482, as added by AB 2138, sections 4, 9). This proposal will also establish how the Committee considers rehabilitation evidence when considering denials or discipline and petitions for reinstatement.

2. Anticipated Benefits from this Regulatory Action

The proposed regulatory amendments would place applicants and licensees on notice that the Committee is statutorily authorized to deny, suspend, or revoke a license based on professional misconduct and discipline taken by another licensing agency or jurisdiction. The proposal also makes relevant parties (e.g., the Deputy Attorneys General from the Office of the Attorney General (AG), Administrative Law Judges from the Office of Administrative Hearings (OAH), respondents, and respondent’s counsels) aware that when considering denial or discipline and petitions for reinstatement of applicants or licensees, the Committee uses the listed criteria to determine whether the crime, act, or professional misconduct is substantially related to the practice of naturopathic medicine.

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

Factual Basis and Rationale

Factual basis and rationale for the determination that each proposed regulatory amendment is reasonably necessary to address the problem for which it is proposed:

BPC section 3622 authorizes the Committee to adopt regulations in order to carry out the purposes of the Naturopathic Doctors Act (hereafter, Act) located in Chapter 8.2 of Division 2 of the BPC.

By enacting AB 2138, the Legislature intended to reduce licensing and employment barriers for persons who are rehabilitated. At the Committee's March 5, 2019, meeting, members discussed how AB 2138 creates new standards for how the Committee could deny an applicant based upon a crime or act substantially related to licensure. Members discussed how existing law authorizes the Committee to deny, suspend, or revoke a license or to take disciplinary action against a licensee because the licensee or applicant has been convicted of a substantially related crime. The new laws authorize the Committee to deny a license or discipline a licensee based upon a substantially related crime only if certain criteria are met.

Staff explained that to meet the new mandates of AB 2138, the Committee must amend 16 CCR 4256, amend 4258, and adopt new sections 4259 and 4259.1, setting forth the criteria authorized pursuant to BPC sections 481, 482, and 493, and AB 2138. The Committee discussed the proposed text prepared by staff based on templates provided by the Department of Consumer Affairs (DCA) to promote uniformity among DCA programs. The DCA modelled the templates after existing regulations adopted by other programs, prior to the enactment of AB 2138 that included revisions that complied with AB 2138. Committee staff made further revisions to the templates to account for the Committee's needs.

By enacting AB 2138, the Legislature intended to reduce licensing and employment barriers for people who are rehabilitated. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.) Accordingly, beginning July 1, 2020, pursuant to amendments to BPC section 480 made by AB 2138, the Committee may not deny a license or discipline a licensee because the individual was convicted of a crime, or due to the acts underlying the conviction, if the individual has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged.

Absent these circumstances, AB 2138 allows the Committee to deny a license or discipline a licensee when an individual has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession, and one of the following conditions exist:

- (1) The conviction occurred within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of:
 - (a) a serious felony under Penal Code section 1 192.7;
 - (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3); or,
 - (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of a specified business or profession regulated by the Accountancy Board, Professional Fiduciaries

Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau;

(2) The applicant is presently incarcerated for the crime; or,

(3) The applicant was released from incarceration for the crime within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of specified businesses or professions regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau.

(BPC section 480, subd. (a)(1), as added by AB 2138.)

At the Committee's March 5, 2019, meeting, members discussed and approved regulatory amendments to 16 CCR 4256 and 4258, and to adopt new regulation sections 4259 and 4259.1 to implement criteria to determine whether a crime or act is substantially related to the qualifications, functions, or duties of a naturopathic doctor, to list criteria of rehabilitation, and implement the changes AB 2138 made to BPC sections 480, 481, and 493. The proposed language incorporates the substantial relationship criteria as set forth in BPC sections 481 and 493, effective July 1, 2020.

The proposed language includes discipline under BPC section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under this section.

The proposed language also references "professional misconduct" as this may be considered a legal basis for denial under BPC section 480, subdivision (b), effective July 1, 2020, per AB 2138.

The proposed regulatory changes also more accurately reflect the Committee's authority to evaluate rehabilitation evidence for all applicants and licensees where the Committee is considering denial or discipline of a license or petitions for reinstatement.

The Committee approved the proposed language and delegated authority to the Executive Director to make any technical, non-substantive changes if necessary, at the March 5, 2019 Committee meeting.

Amend Title 16, CCR 4256. Substantial Relationship Criteria.

Specifically, the Committee proposes to amend 16 CCR 4256 for the following reasons:

(1) *Amend existing text and number as new subdivision (a):*

(a) For the purposes of denial, suspension or revocation of a license or certificate pursuant to section 141 or division~~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 or certificate under the Naturopathic Doctors Act if to a substantial degree it evidences~~evinces~~ present or potential unfitness of a person holding such a license or certificate to perform the functions authorized by the license or certificate in a manner consistent with the public health, safety or welfare.

The proposed language would reidentify existing language, which is also amended, as subdivision (a) for better organization and grouping of similar concepts within the regulatory proposal.

Existing law, at BPC section 141, authorizes the Committee to discipline a licensee for discipline taken by another state, a federal agency, or a country (“foreign jurisdiction”) for any act “substantially related” to the practice regulated through California licensure.

In addition, effective July 1, 2020, BPC section 480 authorizes the Committee to deny or discipline a licensee 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. (See BPC section 480, subd. (b), as added by AB 2138).

This proposal includes references to BPC section 141 (discipline by a foreign jurisdiction) and “professional misconduct” in the Committee’s proposed substantial relationship criteria regulation to provide clarity to the regulated public concerning the Committee’s authority to deny or discipline on these grounds.

The proposed amendments to newly identified subdivision (a) are necessary to provide notice to license applicants and licensees that discipline in an out-of-state jurisdiction and professional misconduct are grounds for license denial, suspension, or revocation, and to implement the requirements of BPC sections 141 and 480. The proposal is also necessary to consolidate into one regulation the criteria the Committee will apply in evaluating whether a crime or other misconduct is substantially related to the naturopathic medicine.

For purposes of clarity, this proposal would use the word “evidences” rather than “evinces.” Both evince and evidence, used as a verb, mean to make something clear. Evidence is a common term in courts of law. Where this section discusses proving “present or potential unfitness” in the administrative hearing context, this proposal seeks to use the term “evidences” to add clarity.

(2) *Delete existing text, including subdivisions (a) through (f):*

~~Such crimes or acts shall include but not be limited to the following:~~

~~(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Naturopathic Doctors Act.~~

~~(b) A conviction of child abuse.~~

~~(c) A conviction as a sex offender.~~

~~(d) The conviction of any crime involving the sale, gift, administration, or furnishing of narcotics, dangerous drugs or dangerous devices, as defined in Section 4022 of the Code.~~

~~(e) A conviction for assault and/or battery, lewd conduct, or driving under the influence of drugs or alcohol.~~

~~(f) A conviction of a crime involving fiscal dishonesty.~~

The existing language of 16 CCR 4256 has two parts. The first part defines “substantially related” and is unnumbered. The second part provides specific examples of what is included in the definition of “substantially related” and is numbered as subdivisions (a) through (f). For clarity and organizational purposes, the proposed text separates the first concept into new subdivision (a) and the latter concept into the new subdivision (c). The original subdivisions (a) through (f) are deleted.

For clarity and to be more concise, subdivisions (b) through (f) are deleted because they are redundant of new subdivisions (c)(1) and (2), or unnecessary because any of those violations of law could constitute unprofessional conduct pursuant to the Naturopathic Doctors Act and/or the Business and Professions Code related to the Department’s healing arts boards.

(3) *Add new subdivision (b)(1)-(3):*

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Committee 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 naturopathic doctor.

Current law specifies each board shall develop criteria for determining whether a crime is substantially related to a specific business or profession. AB 2138 mandates boards consider three criteria when evaluating whether a crime is “substantially related” to the regulated business or profession.

The criteria “shall include all of the following: (1) The nature and gravity of the offense[s]; (2) The number of years elapsed since the date of the offense[s]; and, (3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.” (BPC section 481, subd. (b), as added by AB 2138, section 7; see also BPC section 493, subd. (b), as added by AB 2138, section 13.)

Since BPC sections 481 and 493 require the Committee to use these three criteria in evaluating whether a crime is substantially related to the qualifications, functions, or duties of the profession, the Committee is proposing to adopt a substantial relationship regulation to include all three items listed in subdivision (b)(1) through (3). The inclusion of these criteria in proposed Title 16, CCR 4256, subdivision (b) will also permit the Committee to provide notice to interested parties of the Committee’s criteria for evaluating whether a crime is substantially related to the qualifications, functions, or duties of the profession in one convenient location.

(4) *Add new subdivision (c)(1)-(2):*

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

(1) Any violation of Article 6 of Chapter 1 of Division 2 of the Business and Professions Code.

(2) Any violation of the provisions of Chapter 8.2 of Division 2 of the Business and Professions Code.

For clarity purposes, the new subdivision (c) cross-references new subdivision (a), helping identify the relationship between the two subdivisions. Also, since new subdivision (a) references “professional misconduct,” pursuant to BPC section 480, new subdivision (c) also references “professional misconduct” in addition to crimes and acts.

For clarity and to be more concise, the language of original subdivision (a) is deleted and renumbered as subdivision (c)(2) and further simplified to reference “any violation,” rather than “violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of ...” Furthermore, this excess language was stricken to conform with the DCA template language recommended to promote uniformity between DCA boards and programs.

Subdivision (c)(1) was added to clarify that substantially related crimes, professional misconduct, or acts also includes any violation of the Business and Professions Code provisions governing prohibited acts related to the Department's healing arts boards.

Amend 16 CCR 4258. Criteria for Rehabilitation.

Specifically, the Committee proposes to amend 16 CCR 4258 for the following reasons:

(1) *Retitle and renumber Section 4258 to read: "Section 4258. Criteria For Rehabilitation – Denial of Licensure"*

Currently, Article 9 (Enforcement) of Division 40 of Title 16 of the CCR only includes sections 4256, 4258, and 4260. Currently, section 4258 is generally named "Criteria of Rehabilitation" and addresses multiple distinct concepts, including denial of licensure within subdivision (a) and suspension and revocation within subdivision (b).

For purposes of clarity and to better group similar concepts, this proposal seeks to reorganize and split this regulation into two sections: 4258 and 4259. Former section 4258 shall address denial of licensure only. New Section 4259 shall address suspension, revocation, and reinstatement of licensure.

This proposal also serves the purpose of filling in the gap now covered in section 4259. Both sections will also be more specifically titled as "Criteria for Rehabilitation – Denial of Licensure" and "Criteria for Rehabilitation – Suspension or Revocation" to aid stakeholders in reviewing and utilizing the Committee's regulations.

(2) *Amend subdivision (a) to read: "(a) When considering the denial of a license or certification under Section 480 of the Business and Professions Code on the ground that the applicant was convicted of a crime, the Committee shall consider whether the applicant made a showing of rehabilitation and is presently fit for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Committee shall consider the following criteria: Code, the Committee, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:"* The Committee licenses naturopathic doctors, who are licensed health care practitioners that provide health care services, and further provides certificates in naturopathic childbirth attendance. Therefore "or certification" is added to account for the certifications provided by the Committee.

Existing law, in BPC section 482, requires boards to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering the denial of a license or discipline of a licensee based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC section 482.) Beginning July 1, 2020, BPC section 480 will prohibit the Committee from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or based on the facts underlying a conviction, if the applicant has "made a showing of rehabilitation pursuant to BPC

section 482.” (Section 480, subd. (b), as added by AB 2138, section 4.) In deciding whether to deny or discipline a license based on a conviction, the Committee must consider evidence of the applicant’s rehabilitation, pursuant to the process established in the Committee’s Act, or its regulations, and as directed under BPC section 482. (Section 481, subd. (c), as added by AB 2138, section 7; see also section 493, subd. (b)(2), as added by AB 2138, section 13 [“A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation”].)

As a result of the foregoing changes in law, the Committee is amending its regulations that establish criteria for evaluating rehabilitation when deciding whether to deny, suspend, or revoke a license based on a conviction. (Section 482, subd. (a), as added by AB 2138, section 9.) Specifically, revisions to BPC section 482 require the Committee to consider whether an applicant or licensee has “made a showing of rehabilitation,” if the applicant or licensee:

- (a) Completed the criminal sentence at issue without a violation of parole or probation; or,
- (b) The Board finds, after applying its rehabilitation criteria, that the applicant is rehabilitated. (section 482, subd. (b), as added by AB 2138, section 9.)

Current regulations do not explicitly require the Committee to consider whether the applicant made a showing of rehabilitation if the individual completed the criminal sentence at issue without a violation of parole or probation. Since BPC section 482 will explicitly require the Committee to consider whether under those circumstances the applicant has made a showing of rehabilitation for licensing purposes, the Committee is including this new requirement from AB 2138 in amended 16 CCR section 4258 to provide adequate notice to applicants that this new requirement must be considered by the Committee prior to considering denial. The inclusion of this text at the beginning of new 16 CCR 4258 also allows the Committee to clearly distinguish between this criteria and other criteria that the Committee may use in considering denials based upon other statutory authority. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under the DCA.

Earlier versions of AB 2138 mandated that boards “shall find” an applicant had made a showing of rehabilitation if the applicant or licensee had completed his or her criminal sentence without a violation of parole or probation (see AB 2138, as amended in Assembly on April 2, 2018, section 5.) This would have effectively eliminated the Committee’s discretion to further inquire into rehabilitative efforts after an applicant’s release from the criminal justice system. However, the “shall find” language in earlier versions of AB 2138 was struck and later replaced with the words “shall consider” following recommendations by the Senate Business, Professions and Economic Development Committee on June 20, 2018 (see AB 2138, as amended on June 20, 2018, section 5 and Committee on Business, Professions and Economic Development Analysis, dated June 18, 2018, p. 11, 19). As enacted, the Committee will be

authorized to exercise its discretion 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. (see BPC section 482, subd. (b), operative July 1, 2020.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Committee must consider when denying or disciplining a licensee. To meet constitutional requirements, courts have found that criminal probation conditions must be reasonably related to the goals of enhancing rehabilitative and deterrence objectives and protecting the victim. (*People v. Jungers* (2005) 127 Cal.App.4th 698, 703.) However, courts typically reject the view that applicants and licensees who comply with the terms of their parole or probation 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 *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”].)

The purpose of the Committee’s licensing and enforcement proceedings are to protect the public. As the courts have stated: “The purpose of such a proceeding is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent.” (*Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817 [45 Cal.Rptr.2d 486, 490]. To clarify how the Committee will exercise its discretion for the protection of the public, the Committee proposes to use five criteria, discussed below, to evaluate whether the applicant has made a “showing of rehabilitation” when the applicant has completed the criminal sentence at issue without a violation of parole or probation. Each of these criteria are narrow in scope and would provide the Committee with information specific to the applicant’s criminal sentence and terms or conditions of parole or probation, so that the Committee knows the relevant criteria it must consider when making the determination as to the applicant’s rehabilitation.

The Committee also intends to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under the DCA through the new regulation and the five criteria. In the Committee’s experience, analyzing the following criteria will assist the Committee in making a fair and balanced determination of whether the applicant would be safe to practice, with or without restrictions on a license. The proposed regulation 16 CCR 4258, subdivision (a) would provide transparency and clarity to license applicants who have completed their criminal sentence without a violation of parole or probation. Providing the narrow list of rehabilitation criteria will help license applicants understand the facts and documents to present to the Committee to

demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal arising from a license denial (e.g., the Attorney General (AG), the Office of Administrative Hearings (OAH), 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 the applicant.

(3) *Amend subdivision (a)(1) to read: “(1) The nature and gravity of theseverity of the act(s) or crime(s) under consideration as grounds for denial.”* The Committee must consider this criterion because this is the offense against which the applicant's rehabilitative efforts will be evaluated. This language is also amended for purposes of clarity and to be more concise. The previous criteria under subdivision (a)(1) regarding rehabilitation for purposes of denial of licensure is deleted and consolidated into the revised subdivision (b)(1).

(4) *Amend subdivision (a)(2) to read: “(2) The length(s) of the applicable parole or probation period(s)~~Evidence of any act(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.~~”* The Committee will consider this criterion because the length of time that the applicant served probation or parole without a violation is relevant to whether the applicant is rehabilitated and will comply with licensure requirements in the future. (See *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [“a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice”]). The previous criteria under subdivision (a)(2) regarding rehabilitation for purposes of denial of licensure is deleted and consolidated into the revised subdivision (b)(2).

(5) *Amend subdivision (a)(3) to read: “(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified~~The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).~~”* The Committee must consider this criterion 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 previous criteria under subdivision (a)(3) regarding rehabilitation for purposes of denial of licensure is deleted and consolidated into the revised subdivision (b)(3).

(6) *Amend subdivision (a)(4) to read: “(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation~~The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.~~”* The Committee must consider this criterion because it will further assist the Committee in determining whether the applicant's parole or probation adequately remediated the criminal conduct or whether future monitoring or restriction (e.g., probationary license) is necessary for public protection. In cases where an applicant was convicted of a crime involving alcohol, probation terms requiring the applicant to complete alcohol abuse treatment or

participate in an alcohol abuse program would bear more heavily on the applicant's rehabilitation. (See *In re Billings* (1990) 50 Cal.3d 358, 368 ["An alcoholic's rehabilitation is almost universally predicated on a choice to confront his or her problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous"]). The previous criteria under subdivision (a)(4) regarding rehabilitation for purposes of denial of licensure is deleted and consolidated into the revised subdivision (b)(4).

(7) *Amend subdivision (a)(5) to read: “ (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification~~Evidence, if any, of rehabilitation submitted by the applicant.~~”* The Committee must consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification because this may be relevant to the Committee'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 Committee's evaluation of the applicant's rehabilitation and willingness to conform to the rules of licensure. The previous criteria under subdivision (a)(5) regarding rehabilitation for purposes of denial of licensure is deleted and consolidated into the revised subdivision (b)(6).

(8) *Amend subdivision (b) to read: “(b) If subdivision (a) is inapplicable, or the Committee determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the Committee shall apply the following criteria in evaluating the applicant's rehabilitation. The Committee shall find that the applicant made a showing of rehabilitation and is presently fit for a license if, after considering the following criteria, the Committee finds that the applicant is rehabilitated:~~When considering the suspension or revocation of a license on the grounds that a naturopathic doctor has been convicted of a crime, the Committee, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:~~”*

In addition to the authority to deny or discipline a license based on criminal convictions, the Committee will be authorized to deny or discipline a license based on professional misconduct (BPC section 480, subd. (b), as added by AB 2138, section 4), unprofessional conduct as defined in BPC section 2234 and other provisions of Article 12 of Chapter 5 of Division 2 of the Business and Professions Code. The Committee may also discipline a licensee under BPC section 141 for out-of-state discipline. As a result, the Committee's rehabilitation criteria must also include consideration of rehabilitation evidence for these other types of conduct that may constitute grounds for denial or discipline.

In addition to considering rehabilitation when an applicant completes a criminal sentence without a violation of probation or parole, AB 2138 requires the Committee to consider whether an applicant made a showing of rehabilitation, if the Committee finds, in applying its rehabilitation criteria, that the applicant is rehabilitated. (BPC section 482, subd. (b), operative July 1, 2020.) This proposal would permit the Committee to

consider its standard rehabilitation criteria in evaluating rehabilitation when either the grounds for denial do not involve a crime, or the showing of rehabilitation was not made under subdivision (a) of this Section.

In the Committee's experience, these proposed standards will be useful when considering denials based upon crimes, unprofessional conduct, or professional misconduct committed by an applicant before another licensing board. These standards are needed to provide the Committee with a fair, balanced, and thoughtful approach to evaluating whether sufficient rehabilitative efforts have been made to satisfy the Committee that the applicant is presently eligible for a license. These proposed changes are necessary to give the Committee discretion to analyze rehabilitation evidence using these criteria when considering a denial, and to give proper notice to affected applicants what standards the Committee will use in evaluating whether an applicant is rehabilitated.

As AB 2138 does not prescribe new rehabilitation criteria, this proposal provides a specific, comprehensive list of criteria for the Committee to consider for these applicants, which is not limited to the applicable parole or probation. The list of criteria incorporates the criteria from 16 CCR 4256, subdivision (a) for applicants convicted of a crime, so that similarly-situated applicants may be evaluated by the Committee under the same set of criteria. The list of criteria also anticipates that the Committee may be considering "act(s)" that are the basis for the denial or discipline, since the Committee may be evaluating the rehabilitation of an applicant where the ground for denial or discipline involves acts of professional misconduct, rather than a conviction. Through this proposal, the Committee provides predictability in the application process and uniformity of rehabilitation criteria with other boards under the DCA.

(9) *Amend subdivision (b)(1) to read: "Nature and ~~severity~~ gravity of the act(s) or crime(s) under consideration as grounds for denial~~offense(s).~~"* The Committee will consider the nature and gravity of the act or crime for the same reasons as discussed for subdivision (a). This is the offense or misconduct against which the Committee will judge the applicant's rehabilitation. This is also an already existing regulatory criterion. The Committee proposes to amend "severity" to "gravity." This is not a substantive change and would make the regulation internally consistent with subdivision (a) and with the substantial relationship criteria specified by AB 2138.

(10) *Amend subdivision (b)(2) to read: "Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under section 480 of the Business and Professions Code~~Total criminal record.~~"* The Committee 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 Committee's decision regarding whether the applicant is sufficiently rehabilitated to be licensed and conform to the requirements of licensure. This is already an existing criteria under subdivision (a)(2).

(11) *Amend subdivision (b)(3) to read:* “The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2)~~offense(s).~~” The Committee would consider the time elapsed since commission of the prior crimes or misconduct. The passage of time bears upon a person’s rehabilitation. The greater number of years that have passed, the more time the Committee can take into consideration that the applicant has not committed any acts evidencing a disregard for public safety. Additionally, during such time, the applicant may have completed other rehabilitative efforts for the Committee’s consideration. The ability to maintain rehabilitation over a prolonged period suggests reoffending is less likely. When only a short amount of time has passed, there is less time for the applicant to make changes and demonstrate they have reformed. Accordingly, the Committee must consider this criterion (which has not changed substantively from existing regulation) in evaluating rehabilitation. This is already an existing criteria under subdivision (a)(3).

(12) *Amend subdivision (b)(4) to read:* “Whether the applicant~~licensee~~ has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant~~licensee~~.” The Committee will consider whether the applicant complied with parole, probation, restitution or other sanctions imposed on the applicant. The Committee proposes amending “The extent to which,” to “Whether,” but does not view this as a substantive change. This criterion is otherwise unchanged from existing regulation. The extent to which a person has complied with the terms of parole or probation is already a factor boards consider when evaluating rehabilitation. 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, the Committee must consider these elements to evaluate an applicant’s rehabilitation.

(13) *Amend subdivision (b)(5) to read:* “The criteria in subdivision (a)(1)-(5), as applicable~~If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.~~ The Committee will also consider the criteria in subdivision (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 Committee first evaluates their eligibility for licensure under the criteria in subdivision (a). If the applicant did not demonstrate sufficient rehabilitation under the criteria in subdivision (a), the Committee then applies the broader criteria in subdivision (b). For applicants that did not complete their criminal parole or probation without a violation, the Committee would apply the criteria in subdivision (b), which incorporates the criteria from subdivision (a). This way, similarly-situated applicants (those being considered for denial based on a conviction) are being considered under the same set of criteria.

(14) *Amend subdivision (b)(6) to read:* “Evidence, if any, of rehabilitation submitted by the applicant~~licensee~~.” The Committee would consider rehabilitation evidence the applicant submits. There was no change to this criterion, and the Committee is required to consider such evidence under BPC section 481(c). The Committee retains this requirement to consolidate the Committee’s rehabilitation criteria in one place.

Adopt 16 CCR 4259. Criteria for Rehabilitation – Suspension or Revocation.

Specifically, the Committee proposes to adopt 16 CCR 4259 for the following reasons:

(1) *Adopt new 16 CCR 4259. Criteria for Rehabilitation – Suspension or Revocation.*

This proposal would create a new 16 CCR 4259 entitled “Criteria for Rehabilitation – Suspension or Revocation.” This section is numbered section 4259 because it would follow 16 CCR 4258, which covers a similar concept. The title of the proposed section 4259 would add clarity, uniformity, and consistency with the preceding section 4258, which is entitled “Criteria for Rehabilitation – Denial of Licensure.”

(2) *Adopt new subdivision (a) that reads: “(a) When considering the suspension or revocation of a license on the ground that the holder of the license has been convicted of a crime, the Committee shall consider whether the licensee made a showing of rehabilitation if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Committee shall consider the following criteria:”* This proposal would also add subdivision (a) for better organization and grouping of similar concepts within the regulatory proposal. This new subdivision is necessary to implement the changes required by the passage of AB 2138, for the reasons discussed in the amendment of 16 CCR 4258 subd. (a), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(3) *Adopt new subdivision (a)(1) that reads: “(1) The nature and gravity of the crime(s).”* See discussion of amending 16 CCR 4258 (a)(1), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(4) *Adopt new subdivision (a)(2) that reads: “(2) The length(s) of the applicable parole or probation period(s).”* See discussion of amending 16 CCR 4258 (a)(2), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(5) *Adopt new subdivision (a)(3) that reads: “(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.”* See discussion of amending 16 CCR 4258 (a)(3), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(6) *Adopt new subdivision (a)(4) that reads: “(4) The terms or conditions of parole or probation and the extent to which they bear on the licensee’s rehabilitation.”* See discussion of amending 16 CCR 4258 (a)(4), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(7) *Adopt new subdivision (a)(5) that reads: “(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for the modification.”* See discussion of amending 16 CCR 4258 (a)(5), above.

(8) *Adopt new subdivision (b) that reads: “(b) If subdivision (a) is inapplicable, or the Committee determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the Committee shall apply the following criteria in evaluating the licensee’s rehabilitation. The Committee shall find that the licensee made a showing of rehabilitation if, after considering the following criteria, the Committee finds that the licensee is rehabilitated:”* This new subdivision is necessary to implement the changes required by the passage of AB 2138, for the reasons discussed in the amendment of 16 CCR 4258 subd. (b), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(9) *Adopt new subdivision (b)(1) that reads: “(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.”* See discussion of amending 16 CCR 4258 (b)(1), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(10) *Adopt new subdivision (b)(2) that reads: “(2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation.”* See discussion of amending 16 CCR 4258 (b)(2), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(11) *Adopt new subdivision (b)(3) that reads: “(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).”* See discussion of amending 16 CCR 4258 (b)(3), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(12) *Adopt new subdivision (b)(4) that reads: “(4) Whether the licensee has complied with any terms of probation, parole, restitution or any other sanctions lawfully imposed against such person.”* See discussion of amending 16 CCR 4258 (b)(4), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(13) *Adopt new subdivision (b)(5) that reads: “(5) The criteria in subdivision (a)(1)-(5), as applicable.”* See discussion of amending 16 CCR 4258 (b)(5), above, but instead of for consideration for grounds for denial of an applicant, for consideration for grounds for suspension or revocation of a licensee.

(14) *Adopt new subdivision (b)(6) that reads: “(6) If applicable, evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.”* The Committee will also consider the criteria in subdivision (b)(6). Evidence of dismissal proceedings is relevant to the Committee’s evaluation of rehabilitation, and consequently, it is necessary to consider that evidence in evaluating a licensee. This criterion is also otherwise unchanged from existing regulation section 4258(b).

(15) *Adopt new subdivision (b)(7) that reads: “(7) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent, or immaterial.”* The Committee will consider whether a licensee submitted an application with erroneous information which may have been unintentional, inadvertent, or immaterial. BPC section 480 authorizes the Committee to deny a license based on a false statement of fact on an application. At times, the Committee may not discover a false statement until after the applicant is licensed. The Committee is also authorized to discipline licensees for making such false statements. (BPC section 3663; 16 CCR 4260(p)). If there is evidence to suggest that the false statement may have been unintentional, or did not materially affect the application, the evidence would be relevant to the Committee’s evaluation of the applicant’s rehabilitation and should, therefore, be considered by the Committee.

(16) *Adopt new subdivision (b)(8) that reads: “(8) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.”* The Committee will consider whether a licensee submitted an application with erroneous information which may have been intentional to conceal the truth concerning facts on an application. The information embraced in this criterion bears on a licensee’s willingness to make amends for the errors. Accordingly, the Committee must consider these elements to evaluate a licensee’s reformation from prior misconduct.

(17) *Adopt new subdivision (b)(9) that reads: “(9) Evidence, if any, of rehabilitation submitted by the licensee.”* See discussion of amending 16 CCR 4258 (b)(6), above, but instead of for consideration for grounds for denial, for consideration for grounds for suspension or revocation.

(18) *Adopt new subdivision (c) that reads: “(c) When considering a petition for reinstatement of a license or certification under the provisions of Section 11522 of the Government Code, the Committee shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 4258 of this article.”* The purpose of adding CCR 4259, subdivision (c) is to ensure uniformity in how the Committee evaluates rehabilitation between similarly-situated applicants and reinstatement petitioners. As AB 2138 does not prescribe new rehabilitation criteria, this subdivision points back to the specific list of criteria set out in Section 4258 for the Committee to consider for these former licensees. Since petitioners for reinstatement are situated similarly to new license applicants, it is reasonable to evaluate their rehabilitation using the same criteria the Committee uses to evaluate new applicants, for the reasons discussed above.

Underlying Data

Documents relied upon:

1. Committee's March 5, 2019 meeting agenda,
2. Committee's relevant meeting materials (Tab 7) from March 5, 2019 Committee meeting,
3. Committee's approved meeting minutes from March 5, 2019 Committee meeting,
4. Assembly Bill 2138 (as amended in Assembly April 2, 2018),
5. Assembly Bill 2138 (as amended in Senate June 20, 2018),
6. Assembly Bill 2138 (chapter 995, Statutes of 2018),
7. Senate Committee on Business, Professions and Economic Development Analysis, dated June 18, 2018, and
8. Assembly Floor Analysis, dated August 24, 2018.

Business Impact

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

The Committee has approximately 968 licensees for the current fiscal year. During the 2016/2017 fiscal year the Committee issued 102 licenses and denied 0 licenses, in fiscal year 2017/2018 the Committee issued 94 licenses and denied 0 licenses, and in the first half of fiscal year 2018/2019 the Committee has issued 78 licenses and denied 1 license. Therefore, the Committee has denied fewer than 0.0036 % of all applicants.

Since the Committee has denied fewer than 0.0036 % of all applicants this proposal will not have an adverse economic impact. AB 2138 was enacted to reduce licensing and employment barriers for those convicted of a crime or due to acts underlying the conviction, who have a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. These proposed amendments will further assist in that effort through adoption of standards designed to implement new substantial relationship and rehabilitation criteria. As a result, the Committee anticipates that there may be fewer denials or disciplinary actions based upon criminal convictions and, therefore, no significant or statewide adverse economic impacts.

Economic Impact Assessment

This regulatory proposal will have the following effects:

1. The proposed regulatory action will not create new business or eliminate existing businesses and will not affect the expansion of businesses currently doing business within the State of California because the proposal is not of enough magnitude to create or eliminate businesses. Historically, fewer than 1% of all applicants are

denied and for reasons unrelated to criminal convictions. Even assuming the number of denials or discipline would decrease because of the proposed regulatory action, the Committee believes that this data demonstrates that these regulations would not be significant enough to create or eliminate businesses who hire naturopathic doctors.

2. This regulatory proposal will benefit the health and welfare of California residents because by implementing criteria that emphasize rehabilitative efforts, the proposal will create an opportunity for employment for people who have been convicted of a crime and are able to make a showing of rehabilitation. This may lead to an increase in naturopathic doctors in the marketplace allowing for more health care providers to treat increasing numbers of California consumers.

3. This regulatory proposal will not affect worker safety because the proposal does not involve worker safety. The proposal will amend and add regulations related to substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts, or professional misconduct.

4. This regulatory proposal will not affect the State's environment because the proposal does not involve environmental issues. The proposal will amend and add regulations related to substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts, or professional misconduct.

Specific Technologies or Equipment

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

Consideration of Alternatives

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

The following alternatives were considered and rejected or adopted:

1. Not adopt the regulations: This alternative was rejected because the Committee is required to regulate (BPC sections 481, 482, 493, 4933, and AB 2138) the criteria for denial, suspension or revocation of a license based on the conviction of a crime or professional misconduct that is substantially related to the qualifications, functions, or duties of a naturopathic doctor. The foregoing provisions require the Committee to

establish substantial relationship criteria and criteria to evaluate a showing of rehabilitation for an applicant or licensee, which is not currently addressed in Committee regulations.

2. Adopt regulations: To pursue a regulatory change that requires the Committee to find rehabilitation if the applicant or licensee completed the terms of their criminal probation or parole. Courts give little weight to the fact that an applicant 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 Committee 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 Committee rejected this option.

a. Amendments to Substantial Relationship Criteria for 16 CCR 4256: This option also incorporated the AB 2138 substantial relationship criteria and expanded the criteria to include discipline under BPC section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under this section. The proposed language also includes "professional misconduct," as this may be considered for denial under BPC section 480.

It also lists actual substantially related crimes, professional misconduct, and acts the Committee has determined are cause for denial, suspension, or revocation of a license. This option also specifies the list of crimes, professional misconduct, and acts that are included, but are not limited to just those listed. Therefore, the regulation does not serve as a comprehensive list.

b. Add and amend Rehabilitation Criteria through 16 CCR 4258 and 4259 Related to Criminal Convictions: Exercising this option permits the Committee to evaluate an applicant's rehabilitative efforts using five criteria designed to examine whether the applicant's or licensee's parole or probation was of sufficient duration and magnitude to address the possibility of recurrence of the misconduct. The Committee elected to use greater discretion and resources to evaluate rehabilitative efforts using this option.

Submitting Comments

Any interested person may submit comments to the Committee in writing relevant to the above determinations at 1300 National Drive, Suite 150, Sacramento, California 95834.