

TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS

DIVISION 40. NATUROPATHIC MEDICINE COMMITTEE

Anticipated Publication Date: Friday, March 13, 2020

NOTICE OF PROPOSED RULEMAKING

The Naturopathic Medicine Committee (Committee) proposes to take action to amend sections 4256 and 4258 and adopt new section 4259 of Article 9 of Division 40 of Title 16 of the California Code of Regulations (CCR) regarding substantial relationship criteria, rehabilitation criteria for denials and reinstatements, and for suspensions and revocations as described in the Informative Digest below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Committee has not scheduled a public hearing on this proposed action. However, the Committee will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Persons" in this Notice.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Committee. Please submit written comments, including those sent by mail, facsimile, or email to the addresses listed under "Contact Persons" in this Notice. The written comment period closes at **5:00 p.m. on Tuesday, April 28, 2020**. The Committee will consider only comments received at the Committee's office by that time. Written or oral comments also may be received by the Committee at a hearing, if any is scheduled.

AVAILABILITY OF MODIFICATIONS

The Committee, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in the Notice as the "Contact Persons" and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Business and Professions Code (BPC) sections 482 and 3622 authorize the Committee to make the proposed amendments, which implement, interpret, and make specific BPC sections 141, 475, 480, 481, 482, 488, 490, 493, 726, 3660, and 3662.

INFORMATIVE DIGEST

The Committee licenses naturopathic medicine doctors who are health care practitioners that provide health care services. (BPC sections 3630, 3640, 3643, and 3645.) Existing law (BPC sections 480 and 490) authorizes 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 naturopathic doctors. 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 or discipline of a licensee. The Committee has adopted regulations (16 CCR 4256, 4258, and 4259) that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to qualifications, functions, or duties of a licensee.

Effective July 1, 2020, pursuant to 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 adopt regulations consistent with this recently enacted legislation and to more accurately reflect the Committee's authority to consider denials and discipline.

Effective July 1, 2020, BPC section 481, subsection (b) will require the Committee's substantial relationship criteria regulations to include all of the following:

- The nature and gravity of the offense.
- The number of years elapsed since the date of the offense.
- The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

The amended regulations will also address other changes to law enacted by AB 2138. The proposed regulations include references to "professional misconduct," as this will be considered a legal basis for denial under BPC section 480. The proposed language will also add 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 proposal would also add substantially related crimes, professional misconduct, and acts that would include violating other state laws governing the practice of naturopathic medicine.

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

Anticipated Benefits of the Proposed Regulation:

The proposed regulatory action would place applicants and licensees on notice that the Committee is statutorily authorized to deny, suspend, or revoke a license because of professional misconduct and discipline taken by another licensing body or jurisdiction. The proposal would also make relevant parties (e.g., the Office of the Attorney General, Office of Administrative Hearings, respondents, and respondent’s counsels) aware that when considering denial or discipline 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, which may reduce recidivism and provide economic opportunity to California's residents. The proposed regulatory action furthers 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. Additional licensees may allow for more health care providers to treat increasing numbers of California consumers.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

During the process of developing these regulations and amendments, the Committee conducted a search of any similar regulations of this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Committee has made the following initial determinations:

1. Mandate on local agencies and school districts: None
2. Costs or savings to any state agencies: The Committee anticipates that there may be an increased cost to the state as a result of amending and adopting these sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, committee staff may see an increased workload to research convictions to substantiate that rehabilitation has been achieved. Given the small number of applicants and licensees involved, these costs are predicted to be minor and absorbable.

3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None
4. Other nondiscretionary costs or savings imposed on local agencies: None
5. Costs or savings in federal funding to the state: None
6. Cost impacts on representative private person or business: The Committee is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
7. Statewide adverse economic impact directly affecting businesses and individuals: None
8. Significant effect on housing costs: None

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. The single denial was unrelated to a criminal conviction. Therefore, the Committee has denied fewer than 0.0036 % of all applicants. The Committee is unaware of how many potential applicants may have never applied due to their criminal histories.

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.

Effect on Small Business:

This regulation will not have a significant statewide effect on small businesses because the proposal is not of enough magnitude to expand 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. The single denial was unrelated to criminal convictions. Since the Committee has denied fewer than 0.0036 % of all applicants for reasons unrelated to criminal convictions this proposal is unlikely to decrease the number of denials. Even assuming the number of denials or discipline would decrease because of these proposed amendments, the Committee believes that this data demonstrates that the decrease would not be significant enough to expand businesses who hire naturopathic doctors.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulatory action will not create new businesses or jobs 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 or naturopathic doctors jobs.

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 and, allow 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. 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.

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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Committee must determine that no reasonable alternative the Committee considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Committee invites interested persons to submit written comments to the Committee at 1300 National Drive, Suite 150, Sacramento, California 95834 during the written comment period. The Committee further invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at hearing, if any is scheduled.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Committee will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of

Proposed Action, the proposed Text of the regulations, the Initial Statement of Reasons, and other information upon which the rulemaking is based, including:

1. Committee's March 5, 2019 meeting agenda,
2. Committee's relevant meeting materials (Tab 7) from the March 5, 2019 Committee meeting,
3. Committee's approved meeting minutes from the 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.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Committee may adopt the proposed regulations substantially as described in this Notice.

If the Committee makes modifications which are sufficiently related to the originally proposed text, the Committee will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Committee adopts the regulation as revised.

Please send requests for copies of any modified regulations addressed to the individuals listed under "Contact Persons" in this Notice. The Committee will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be made available upon request. Please send requests addressed to the individuals listed under "Contact Persons" in this Notice.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the proposed regulations in underline and strikethrough can be accessed through our website at: www.naturopathic.ca.gov.