

**State of California
Office of Administrative Law**

In re:
Dental Board of California

Regulatory Action:

Title 16, California Code of Regulations

Amend sections: 1019, 1020

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2020-0810-01

OAL Matter Type: Regular (S)

In this action, the Dental Board adopts criteria to be used in determining whether a crime, professional misconduct, or other act is substantially related to the professional practice of its licensees for purposes of license denial, suspension, or revocation. The action adopts criteria for determining whether an applicant for a license, or for reinstatement of a license, or for the modification or termination of probation of a license, has been rehabilitated subsequent to a criminal conviction, professional misconduct, or other act. The action also adopts criteria for determining whether a licensee has been rehabilitated, subsequent to a criminal conviction, professional misconduct, or other act, when considering whether to suspend or revoke his/her license.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/22/2021 pursuant to section 11343.4(b)(3) of the Government Code.

Date: January 22, 2021



Eric Partington
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Karen Fisher, Executive Officer
Copy: Gabriel Nevin

OFFICE OF ADMINISTRATIVE LAW

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Kenneth J. Pogue
Director

MEMORANDUM

TO: Gabriel Nevin
FROM: OAL Front Desk
DATE: January 26, 2021
RE: Return of Rulemaking Materials
OAL Matter Number 2020-0810-01
OAL Matter Type Regular (S)

OAL hereby returns the rulemaking record your agency submitted for review regarding “Substantial Relationship Criteria and Criteria for Rehabilitation.”

If this is an approved matter, it contains a copy of the regulation(s) stamped “ENDORSED APPROVED” by the Office of Administrative Law and “ENDORSED FILED” by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped “ENDORSED FILED” by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation’s effective date. Additionally, the effective date of the regulation will be noted on OAL’s web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. **Section 11343(c)(1):** Within 15 days of OAL filing a state agency’s regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. **Section 11343(c)(2):** Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE (the following does not apply to files that have been disapproved or withdrawn)

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATION SUBMISSION (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

REGULAR

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER 2020-0810-01	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JAN 22 2021

1:28 pm

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
Dental Board of California

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2020-11-7	PUBLICATION DATE 3/13/20	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Substantial Relationship Criteria and Criteria for Rehabilitation	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1019, 1020
TITLE(S) 16	REPEAL

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
06/02/2020-06/17/2020

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) July 1 or effective on filing thereafter
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
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Other (Specify) **Kimberly Kirchmeyer, Director, Department of Consumer Affairs** *Kimberly Kirchmeyer*

7. CONTACT PERSON Gabriel Nevin	TELEPHONE NUMBER 916-263-2027	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) gabriel.nevin@dca.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Karen Fischer</i>	DATE 8/13/20
TYPED NAME AND TITLE OF SIGNATORY Karen Fischer, Executive Officer, Dental Board of California	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 22 2021

Office of Administrative Law

Dental Board of California
Substantial Relationship and Rehabilitation Criteria
Order of Adoption

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

Amend Sections 1019 and 1020 of Article 5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read as follows:

Section 1019. Substantial Relationship Criteria.

(a) For the purposes of denial, suspension or revocation of a license of a dentist or dental auxiliary pursuant to Section 141, Division 1.5 (commencing with Section 475), or Sections 1670.1, 1680(e), or 1681(c) of the Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a dentist or dental auxiliary if to a substantial degree it evidences present or potential unfitness of a licensee~~person holding such a license~~ to perform the functions authorized by his~~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 subdivision (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 the profession in which the applicant seeks licensure.

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

~~(a)~~(1) Any violation of Article 6, Chapter 1, Division 2 of the Code except Sections 651.4, 654 or 655.

~~(b)~~(2) Any violation of the provisions of Chapter 4, Division 2 of the Code.

Note: Authority cited: Sections 481 and 1614, Business and Professions Code.
Reference: Sections 7.5, 141, 480, 481, 490, 493, 1670.1, 1680 and 1681, Business and Professions Code.

Section 1020. Application Review and Criteria for Evaluating Rehabilitation.

(a)(1) In addition to any other requirements for licensure, when considering the approval of an application, the Board or its designee may require an applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board if it appears that the applicant may be unable to safely practice due to mental illness or physical illness affecting competency. An applicant's failure to comply with the examination requirement shall render his or her application incomplete. The report of the examiners shall be made available to the applicant. The Board shall pay the full cost of such examination. If after receiving the report of evaluation, the Board determines that the applicant is unable to safely practice, the Board may deny the application, or may issue the applicant a license that is placed on probation with terms and conditions. If the Board issues a license on probation, the probationary order shall include an order that the license be revoked, stayed and placed on probation for the entire term of probation. In issuing a license on probation, the Board may consider any or all of the following terms and conditions:

(iA) Requiring the licensee to obtain additional training or pass an examination upon completion of training, or both. The examination may be written, oral, or both, and may be a practical or clinical examination or both, at the option of the Board;

(iiB) Requiring the licensee to submit to a mental or physical examination, or psychotherapy during the term of probation under the terms and conditions provided for in the "Dental Board of California Disciplinary Guidelines With Model Language" revised 08/30/2010, incorporated by reference at Section 1018; or,

(iiiC) Restricting or limiting the extent, scope or type of practice of the licensee.

(2) If the Board determines, pursuant to proceedings conducted under this subdivision, that there is insufficient evidence to bring an action against the applicant, then all Board records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential. If no further proceedings are conducted to determine the applicant's fitness to practice during a period of five years from the date of the determination by the Board of the proceedings pursuant to this subdivision, then the Board shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the applicant by the Board, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the applicant pursuant to the provisions of Section 11507.6 of the Government Code.

(b) Denial of a license.

(1) When considering the denial of a license under Section 480 of the Code on the ground that the applicant has been convicted of a crime, the Board shall consider whether the applicant made a showing of rehabilitation, 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: the Board in evaluating the rehabilitation of the applicant and his present eligibility for a license, will consider the following criteria:

(A) The nature and gravity of the crime(s).

(B) The length(s) of the applicable parole or probation period(s).

(C) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(D) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

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

(2) If an applicant has not completed the criminal sentence at issue without a violation of parole or probation, the Board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivisions (b)(1)(A)-(E), the denial is based on professional misconduct, or the denial is based on the ground specified in Section 1687, the Board shall apply the following criteria in evaluating an applicant's rehabilitation:

(1A) The nature and ~~severity~~ gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

(2B) Evidence of any act(s), professional misconduct, 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.

(3C) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subdivision (2)(1A) or (2)(2B).

~~(4D)~~ ~~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.

~~(5E)~~ The criteria in subdivisions (b)(1)(A) through (E), as applicable.

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

(c) Suspension or revocation of a license.

(1) When considering the suspension or revocation of a license on the grounds of conviction of a crime, the Board 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 Board shall, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(A) The nature and gravity of the crime(s).

(B) The length(s) of the applicable parole or probation period(s).

(C) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(D) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.

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

(2) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the Board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivisions (c)(1)(A)-(E), the suspension or revocation is based on a disciplinary action as described in Section 141 of the Code, or the suspension or revocation is based on one or more of the grounds specified in Sections 1611.5, 1638.1, 1646.7, 1647.9, 1647.17, 1647.25, 1647.34, 1670, 1670.1, 1680, 1681, 1682, 1683, 1683.1, 1684, 1684.1, 1684.5, 1685, or 1687, the Board shall apply the following criteria in evaluating the licensee's rehabilitation:

~~(1A)~~ The nature and severity gravity of the act(s), disciplinary action(s), or offense crime(s);.

~~(2B)~~ Total criminal record;.

(3C) The time that has elapsed since commission of the act(s), disciplinary action(s), or offense/crime(s);

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

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

(6F) The criteria in subdivisions (c)(1)(A) through (E), as applicable.

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

(d) When considering a petition for reinstatement of a license, the Board shall evaluate evidence of rehabilitation, considering those criteria of rehabilitation listed in subsections (c)(2)(A)-(G).

Note: Authority cited: Sections 482 and 1614, Business and Professions Code.
Reference: Sections 7.5, 480, 482, and 820, 1611.5, 1638.1, 1646.7, 1647.9, 1647.17, 1647.25, 1647.34, 1670, 1670.1, 1680, 1681, 1682, 1683, 1683.1, 1684, 1684.1, 1684.5, 1685 and 1687, Business and Professions Code; and Section 11519, Government Code.