



**Dental Hygiene Board of California  
California Department of Consumer Affairs**

**INITIAL STATEMENT OF REASONS**

**Hearing Date:** TBD

**Subject Matter of Proposed Regulations:** Substantial Relationship and Rehabilitation Criteria

**Sections Affected:** Sections 1135, 1136, and 1137 of Title 16 California Code of Regulations (CCR)

**Background and Statement of the Problem:**

The Dental Hygiene Board of California (Board) is the state entity charged with oversight authority of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions (collectively RDHs). The Board carries out its regulatory authority through enforcement of statutory provisions of the Dental Practice Act, Business and Professions Code (B & PC) sections 1900 through 1967.4, and Title 16 of the CCR. The Board's authority to take disciplinary action against a licensee derives from the State's inherent power to regulate the use of property to preserve public health, morals, comfort, order, and safety. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

Effective July 1, 2020, Assembly Bill (AB) 2138 (Chapter 995, Statutes of 2018) requires boards within the Department of Consumer Affairs (DCA) to amend their existing regulations governing substantial relationship and rehabilitation criteria. B & PC section 481 will require the Board to develop criteria, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the dental hygiene profession. In addition, B & PC section 493 will require the Board to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates by employing specific criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession. The substantial relationship requirement stems from the due process principle that a statute constitutionally can prohibit an individual from practicing a lawful profession only for

reasons related to his or her fitness or competence to practice that profession.  
(*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1137-1138.)

Similarly, B & PC section 482 will require the Board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. In the context of professional licensing decisions, the Supreme Court of California has held that, “[r]ehabilitation ... is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Additionally, the Legislature’s “clear intent,” in enacting AB 2138 was “to reduce licensing and employment barriers for people who are rehabilitated.” (*Moustafa, supra*, at p. 1135.)

The problem the Board is addressing with the adoption of these regulations is that the Board currently does not have its own regulations governing substantial relationship and rehabilitation criteria. B & PC section 1906, subdivision (d) provides that regulations of the Dental Board of California (DBC) shall continue to apply to RDHs, until such time as the Board adopts its own regulations. To address this issue, and to ensure consistency with the requirements of AB 2138, the Board is proposing to add three new regulatory sections under Title 16 of the CCR regarding substantial relationship and rehabilitation criteria.

CCR section 1135 establishes the criteria for determining when a crime is substantially related to the qualifications, functions and duties of a licensee. CCR sections 1136 and 1137 establish the criteria for determining rehabilitation of an applicant or licensee when considering the denial, suspension, revocation or reinstatement of a license on the basis of a criminal conviction.

At the Board’s April 12-13, 2019 meeting, this regulatory proposal was presented to the Board for its review and approval. The Board approved the proposed language and delegated authority to the Board’s executive officer to make any technical, non-substantive changes, if necessary.

Accordingly, to ensure compliance with the statutory mandates of AB 2138, and to promulgate the Board’s independent substantial relationship and rehabilitation criteria regulations, the Board proposes to add sections 1135, 1136, and 1137 of Article 10 of Division 11 of Title 16 of the CCR.

**SPECIFIC PURPOSE, ANTICIPATED BENEFIT, AND RATIONALE:**

**Amend the title of Article 10 to “Denials, Discipline, and Reinstatement” and add section 1135 of Article 10 of Division 11 of Title 16 of the CCR (Substantial Relationship Criteria)**

## Section 1135, subdivision (a)

### Purpose:

Existing law, at B & PC section 141, authorizes the Board to discipline a licensee for discipline taken by another state, a federal agency, or a country ("foreign jurisdiction") for any act "substantially related" to the practice regulated through California licensure. In addition, effective July 1, 2020, BPC section 480 authorizes this Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California for "professional misconduct" under specified conditions. (See BPC, § 480, subd. (b), as added by AB 2138).

This proposal includes references to B & PC section 141 (discipline by a foreign jurisdiction) and "professional misconduct" in the Board's proposed substantial relationship criteria regulation, to reflect the Board's authority to discipline or deny on these bases.

The proposed language also specifies that a crime, professional misconduct, or act is considered substantially related "if, to a substantial degree, it evidences present or potential unfitness of a person holding such a license to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare."

The purpose of connecting the licensee's crime, professional misconduct, or act to an evidenced unfitness related to performing functions consistent with the public's health, safety, or welfare is to identify the types of crimes, professional misconduct, or acts with which the Board is concerned.

Anticipated Benefit: The proposed addition of section 1135, subsection (a) would provide clarity to applicants and licensees that the Board is statutorily authorized to deny, suspend, or revoke a license, as applicable, on the basis of professional misconduct and discipline in an out-of-state jurisdiction. The regulatory proposal would also apprise pertinent parties to administrative adjudication, e.g. the Deputy Attorney General, Administrative Law Judge, Respondent, and Respondent's counsel, that when disciplining applicants or licensees for a criminal conviction, the Board is required to determine whether the act is substantially related to the practice of dental hygiene using the specified criteria.

## Rationale:

In the Board's experience, this standard set forth in subdivision (a) for a substantial relationship is relevant to crimes and/or acts committed by a licensee in a foreign jurisdiction or professional misconduct committed by an applicant before another licensing board. As a result, the proposed language is necessary to give proper notice to those affected applicants and licensees of what standard the Board will use in evaluating what crimes, professional misconduct, and/or acts the Board considers "substantially related," and that could be a basis for license denial, suspension, or revocation by this Board pursuant to BPC sections 141, 480, or 490. The proposed regulation also provides notice to applicants and licensees, with a criminal history, that the Board may deny, suspend, or revoke a license for a crime, professional misconduct, and/or act that evidences unfitness to perform functions of an dental hygienist and involves a concern for public health, safety, or welfare.

The title of Article 10 is revised to state "Denials, Discipline, and Reinstatement" to reflect the adoption of sections 1135 (Substantial Relationship Criteria), 1136 (Rehabilitation Criteria for Denials and Reinstatements), and 1137 (Rehabilitation Criteria for Suspensions and Revocations), and therefore, more accurately and broadly state the contents of Article 10.

### **Section 1135, subdivision (b)**

Purpose: The purpose of adding CCR section 1135, subdivision (b) is to implement AB 2138 and B & PC section 481, which requires each board to develop criteria to aid the Board when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions regulated by DCA boards.

Anticipated Benefit: The regulatory proposal would provide clarity and transparency to license applicants and licensees by listing the specific criteria the Board must consider when making the substantial relationship determinations applicable to criminal convictions. The proposal would also apprise pertinent parties to administrative adjudication, e.g. the Deputy Attorney General, Administrative Law Judge, Respondent, and Respondent's counsel, of the specific criteria used by the Board to determine whether a criminal conviction is substantially related to the practice of dental hygiene.

Rationale: B & PC section 480 presently authorizes the Board to deny an application for licensure based on a conviction for a crime or act substantially related to the licensed business or profession. (§ 480, subd. (a)(3)(B).) Likewise, section 490 authorizes the Board to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the business or

profession. (§ 490, subd. (a).) B & PC section 481 requires the Board to develop criteria to help evaluate whether a crime is substantially related to the dental hygiene profession, and requires the Board to establish the criteria via regulations.

By enacting AB 2138, the Legislature amended B & PC section 480 to limit a board's ability to use prior convictions or acts when denying a license. Beginning July 1, 2020, boards may not deny a license to an applicant because the applicant was convicted of a crime, or due to acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. (§ 480, subds. (b) and (c).)

Absent these circumstances, AB 2138 will permit boards to deny a license when an applicant 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 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 a specified business or profession regulated by enumerated DCA boards and bureaus.
- 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 serious felony under Penal Code section 1192.7, a registerable offense under Penal Code section 290, or a felony financial crime as specified in condition number one (1), above.

In addition, AB 2138 specified three criteria that boards must consider 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; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed." (B & PC § 481, subd. (b), as added by AB 2138, § 7; see also B & PC § 493, subd. (b), as added by AB 2138, § 13.)

The proposed regulation lists each of the three criteria for the Board to consider when making the substantial relationship determination. This proposed addition is necessary

to conform the regulation to statute, and to consolidate the Board's substantial relationship criteria in one regulatory section.

### **Section 1135, subdivision (c)**

Purpose: The purpose of adding section 1135, subdivision (c) is to clarify that crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a Board licensee include, but are not limited to the following:

- violating or attempting to violate, any provision or term of Chapter 1, Division 2 of the B & PC;
- violating or attempting to violate, any provision or term of the Dental Practice Act or other state or federal laws governing the practice of RDHs;
- a conviction or act involving fiscal dishonesty;
- a conviction or act involving child abuse;
- a conviction requiring a person to register as a sex offender pursuant to section 290 of the Penal Code;
- a conviction or act involving lewd conduct or sexual impropriety;
- a conviction or act involving assault, battery, or other violence;
- any conviction, crime, professional misconduct, or act involving the use, sale, gift, administration, or furnishing of narcotics; and
- a conviction for driving under the influence of drugs or alcohol.

Anticipated Benefit: The proposed addition of section 1135, subdivision (c) would provide clarity to applicants and licensees of the specific crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a Board licensee. The proposal would also apprise pertinent parties to administrative adjudication, e.g. the Deputy Attorney General, Administrative Law Judge, Respondent, and Respondent's counsel, that substantially related crimes, misconduct, and acts include violations of other state or federal laws governing the practice of dental hygiene.

Rationale: As reflected in B & PC sections 141 and 480, the Board may deny, suspend, or revoke a license, as applicable, on the ground of substantially related out-of-state discipline or professional misconduct. To incorporate and clarify these statutory provisions, the proposal would specify that substantially related crimes, professional misconduct, and acts include violations of other state or federal laws governing the practice of dental hygiene.

Regarding the crimes or acts listed in subsection (c), the Board refers to the general denial Division of the Business and Professions Code, currently section 480-489, which is noted in the regulation's Reference annotation. Similarly, the Board includes any violation of the

Dental Practice Act or other laws governing the practice of dental hygienists, as being substantially related crimes or acts and/or professional misconduct. Requirements of the dental law are deemed directly related to the duties of licensure.

Regarding subsection (c)(3), fiscal dishonesty, hygienists often work in dental offices that receive federal funding and/or deal with insurance companies on a regular basis. Reporting of accurate services is a duty required by licentiates. Conduct involving fiscal dishonesty erodes trust that the services will be accurately billed to the appropriate parties. To enhance trust in the profession, then, acts or crimes involving fiscal dishonesty are deemed substantially related to the duties of licensure. For instance, a conviction for tax evasion / income tax fraud was considered related to the practice of medicine in *Windham v. Bd. of Med. Quality Assurance* (1980) 104 Cal. App. 3d 461; Medi-Cal fraud by a dentist was upheld as cause for revocation in *Hanna v. Dental Bd. of California* (2012) 212 Cal. App. 4th 759, citing a previous medical board action: Convictions for Medi-Cal fraud are substantially related to a professional's fitness or capacity to practice her profession. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305–306, 144 Cal.Rptr. 826 (*Matanky*) [“Intentional dishonesty ... demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine”].) *Hanna*, 212 Cal. App. 4th 759, 765.

Within the general provisions of the Healing Arts Division of the Business and Professions Code, section 726 was amended by AB 179 (Chapter 510, Statutes of 2015), to read: “(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division or under any initiative act referred to in this division.” Dentistry and Dental Hygiene are chapters of the Healing Arts Division, and so the article on Unprofessional Conduct applies.

In *Green v. Board of Dental Examiners* (1996), 47 Cal.App.4th 786, a dentist’s sexual conduct with patients was substantially related to his functions and duties as dentist and thus warranted disciplinary action.

The disciplinary action against Green was premised on Section 726 which provided that “ [t]he commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer which is substantially related to the qualifications, functions, or duties of the occupation for which a license was issued constitutes unprofessional conduct and grounds for disciplinary action....’ ” (*Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, 594, 10 Cal.Rptr.2d 452.) “ [S]ection 726, which is a licensing provision, allows the licensing authority to discipline a [dentist] who engages in sexual acts with a patient only if it is “substantially related to the qualifications, functions, or duties of the occupation for which a license was issued....” [Citation.]’

[Citation.]” (*Id.* at p. 597, 10 Cal.Rptr.2d 452.)

“[T]he statute does not bar all sexual relations with a patient—only activity which is ‘substantially related to the qualifications, functions, or duties of the occupation.’ ” (*Gromis* at p. 594, 10 Cal.Rptr.2d 452.) “Of course, nonconsensual sexual advances or touching has been upheld as a ground for discipline. [Citation.] Consensual sexual activity, too, has been found a legitimate basis for discipline when the sexual activity occurred under guise of treatment, as part of a physical examination, during psychiatric treatment or in exchange for drugs.” (*Id.* at p. 595, 10 Cal.Rptr.2d 452.)

*Green*, 800-801.

In *Atienza v. Taub* (1987) 194 Cal.App.3d 388, the appellate court held ...that a sexual relationship with a patient constitutes professional negligence ‘only if the physician engaged in the sexual conduct on the pretext that it was a necessary part of the treatment for which the patient has sought out the physician.’ [(*Atienza*, at p. 392, 239 Cal.Rptr. 454.)]” (*Gromis v. Medical Board, supra*, 8 Cal.App.4th at p. 596, 10 Cal.Rptr.2d 452.)

*Green*, 802.

The *Gromis* court, however, found that a case-by-case analysis was required to determine whether the doctor used deception or abused a position of trust to induce sexual conduct, or if the doctor’s medical judgment might be compromised by a sexual interest in the patient. More than an “under a guise of treatment” standard, the court in *Green* saw a relationship of trust being abused by professional status and knowledge.

Dental hygiene services are often performed in a private room, where the consumer is ensconced in a position of semi- or full- recline. A hygienist, as opposed to the consumer, has full movement around the room and over the consumer. A hygienist is trusted to touch the consumer to perform hygiene-related services, such as draping (and removing) x-ray covers over a consumer, adjusting a consumer’s head for teeth cleaning, or inserting instruments into a consumer’s mouth for dental work.

Therefore, given the position of trust in which licentiates are held, the Board has determined that any conviction or act involving child abuse, any conviction which requires a licentiate to register as a sex offender, and any conviction or act involving lewd conduct or sexual impropriety would be considered substantially related to the nature and duties involved in providing dental hygiene. These acts void trust, and licentiates must be trustworthy.

As a healing art, governed in principle by the Hippocratic Oath to do no harm, the Board



has determined that any conviction or act involving assault, battery, or other violence, or furnishing of dangerous drugs or devices, is substantially related to the covenant not to harm fellow persons. See, *Weissbuch v. Board of Medical Examiners* (1974) 41 Cal.App.3d 924:

...conviction of a doctor for violation of the laws regarding narcotics and dangerous drugs or a doctor's personal non-prescribed use of such substances evidences a sufficient danger to the public that sanctions should be imposed regardless of the availability of evidence that such conduct in fact impaired the doctor's professional skill.

Similarly, given the current common understanding in society that "impaired driving kills," any licentiate who drives under the influence of drugs or alcohol is presumed to understand the risk they pose to other members of society and thus violates the Oath.

In *Watson, supra*, 176 Cal.App.4th 1407, 98 Cal.Rptr.3d 715, the Medical Board of California revoked the license of a physician based on four arrests for DUI. (*Id.* at pp. 1411-1412, 98 Cal.Rptr.3d 715.) None of the arrests had resulted in a conviction, although criminal charges related to the most recent arrest were still pending at the time of the administrative hearing. (*Id.* at p. 1413-1414, 98 Cal.Rptr.3d 715.) On appeal, the physician asserted section 2239 permitted discipline based on the use of alcohol in a dangerous manner only if there was a separate finding establishing a nexus between such use and the physician's ability to practice medicine safely. (*Id.* at p. 1411, 98 Cal.Rptr.3d 715.) The court determined the Legislature had made an implied finding that the use of alcohol in a dangerous manner was de facto unprofessional conduct that substantially related to the physician's fitness to practice medicine such that no further finding was required in an individual case, and that it was constitutional for the Legislature to establish the nexus in this manner. (*Id.* at pp. 1418-1424, 98 Cal.Rptr.3d 715.)

*Walker v. Physical Therapy Bd. of California* (2017), 16 Cal. App. 5th 1219, 1229. In *Walker*, a single act (not a conviction) of intemperance formed the basis for discipline of a physical therapist. See also *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, where:

The court concluded that a nexus exists, given that driving under the influence "reflect[s] a lack of sound professional and personal judgment," threatens the safety of the public, and demonstrates both a disregard of the medical knowledge of the effects of alcohol and the legal prohibitions against drinking and driving.

*Griffiths, supra*, at p. 770.

Further, in *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, a nurse was disciplined for a single incidence of DUI.

**Add section 1136 of Article 10 of Division 11 of Title 16 of the CCR (Rehabilitation Criteria for Denials and Reinstatements)**

**Section 1136, subdivision (a)**

Purpose: The purpose of adding CCR section 1136, subdivision (a) is to comply with the requirements of AB 2138, section 9, and B & PC section 482, subdivision (b)(1), which requires the Board to consider whether an applicant has made a showing of rehabilitation if the applicant has completed the criminal sentence at issue without a parole or probation violation. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also provides a specific list of criteria for the Board to consider for applicants. The list of criteria is narrow in scope and limited to considerations relevant to the crime and the criminal sentence, since AB 2138 requires the Board to consider rehabilitation in the narrow context of an applicant who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under the DCA.

Anticipated Benefit: The regulatory proposal to CCR section 1136, subdivision (a) would provide transparency and clarity to applicants who have completed their criminal sentence without a parole or probation violation. Providing the narrow list of rehabilitation criteria would help applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation. The proposal would also assist pertinent parties to administrative adjudication, e.g. the Deputy Attorney General, Administrative Law Judge, Respondent, and Respondent'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.

Rationale: Existing law required boards to develop criteria to evaluate rehabilitation of an applicant when considering denying or disciplining a licensee based on a conviction, and to consider evidence of rehabilitation in making such a decision. (B & PC § 482.) A board may not deny an applicant a license based solely on a misdemeanor conviction, if the applicant met the applicable requirements of the criteria of rehabilitation that the board developed. (B & PC § 480, subd. (b).) Additionally, B & PC section 1905, subdivision (a)(7) authorizes the Board to deny, suspend, or revoke a license under their purview. Furthermore, B & PC section 1906, subdivision (a) authorizes the Board to adopt, amend and revoke such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Dental Practice Act related to RDHs.

Operative July 1, 2020, B & PC section 480 will prohibit the Board from denying a

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

To implement AB 2138, it is necessary for the Board to promulgate section 1136 in order to establish criteria for evaluating rehabilitation, when deciding whether to deny a license based on a criminal conviction. (B & PC § 482, subd. (a), as added by AB 2138, § 9.) The Board must also decide whether an applicant “made a showing of rehabilitation,” if the applicant or licensee completed the criminal sentence at issue without a parole or probation violation. (B & PC § 482, subd. (b), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when denying a license. The extent to which a person complied with the terms of parole or probation is already a factor DCA boards often consider when evaluating rehabilitation. (see, 16 CCR section 1020, subd. (c)(4).) However, courts historically reject the view that complaint applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole.”].) Nonetheless, under AB 2138, the Board must now consider whether an applicant who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

Subdivision (a) of the proposal clarifies the criteria for the Board to consider when making the determination that the applicant who has successfully completed the criminal sentence has made a showing of rehabilitation:

- The nature and gravity of the crime(s) under consideration.
- The length(s) of the applicable parole or probation period(s).
- The extent to which the applicable parole or probation period was shortened or

lengthened, and the reason(s) the period was modified.

- 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 terms or conditions of parole or probation were modified, and the reason(s) for modification.

These criteria are necessary to assist the Board in evaluating rehabilitation. The purpose of evaluating an applicant's rehabilitation is to determine whether the applicant is sufficiently reformed to be licensed, except that AB 2138 requires the Board to evaluate rehabilitation in the narrow context of an applicant who completed the criminal sentence without violating parole or probation. Each of these criteria are narrow in scope and would provide to the relevant information to the Board regarding the applicant's criminal sentence and terms or conditions of parole or probation, so that the Board knows the relevant criteria it must consider to make the determination as to the applicant's rehabilitation. In addition, to provide uniformity with other DCA boards, the proposed criteria were adopted by the Board pursuant to DCA's recommended rehabilitation criteria.

The Board must consider the nature and gravity of the crime, because this is the offense against which the applicant's rehabilitative efforts will be evaluated. The Board will consider the length of the applicable parole or probation period, 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 Board must consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the applicant is sufficiently rehabilitated.

The Board must consider the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, because the actual parole or probation terms can inform the Board on whether the applicant is rehabilitated. For instance, in cases where an applicant was convicted of a crime involving alcohol, probation terms requiring the applicant to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the applicant's rehabilitation. (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 Board 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 Board's determination. For instance, if correctional authorities removed terms of parole or probation due to the applicant's good behavior, this would bear on the Board's evaluation of the applicant's rehabilitation and willingness to conform to the rules of licensure.

### **Section 1136, subdivision (b)**

Purpose: The purpose of adding CCR section 1136, subsection (b) is to comply with the requirements of AB 2138, section 9, and B & PC section 482, subdivision (b)(2), which require the Board to consider whether an applicant has made a showing of rehabilitation if: (1) the applicant has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Board does not find that the applicant made a sufficient showing of rehabilitation based on the narrow criteria in subsection (a); or (3) the denial is based on something other than a crime, such as professional misconduct. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also provides a specific, more comprehensive list of criteria for the Board to consider for these applicants, which is not limited to the applicable parole or probation. The list of criteria that the Board will utilize to consider whether an applicant made a showing of rehabilitation is as follows:

- The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under sections 480 of the B & PC.
- The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (b)(1) or (b)(2).
- The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- Evidence, if any, of rehabilitation submitted by the applicant.

The list of criteria anticipates that the Board may be considering "acts" that are the basis for the denial, since the Board may be evaluating the rehabilitation of an applicant where the basis for denial involves acts of professional misconduct, rather than a conviction. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other DCA boards.

Anticipated Benefit: The proposed addition to CCR section 1136, subsection (b) would provide transparency and clarity to license applicants who have not completed their

criminal sentence without a violation of parole or probation or otherwise do not qualify for consideration under subsection (a). Providing the list of rehabilitation criteria would help applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation. The proposal would also assist pertinent parties to administrative adjudication, e.g. the Deputy Attorney General, Administrative Law Judge, Respondent, and Respondent'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.

Rationale: Existing law required boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying a license based on a conviction, acts of dishonesty, fraud, or deceit, or acts that would be grounds for discipline, and to consider evidence of rehabilitation in making such decisions. (B & PC, § 482.) A board may not deny an applicant a license based solely on a misdemeanor conviction, if the applicant met the applicable requirements of the criteria of rehabilitation that the board developed. (B & PC, § 480, subd. (b).) Additionally, B & PC section 1905, subdivision (a)(7) authorizes the Board to deny, suspend, or revoke a license under their purview. Furthermore, B & PC section 1906, subdivision (a) authorizes the Board to adopt, amend and revoke such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Dental Practice Act related to RDHs.

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

To implement AB 2138, it is necessary for the Board to promulgate section 1136 in order to establish criteria for evaluating rehabilitation, when deciding whether to deny a license based on a conviction. (B & PC, § 482, subd. (a), as added by AB 2138, § 9.) The Board must also decide whether an applicant or licensee "made a showing of rehabilitation," if the applicant did not complete the criminal sentence at issue without a violation of parole or probation, or the board finds, in applying its rehabilitation criteria, that the applicant is rehabilitated. (B & PC, § 482, subd. (b), as added by AB 2138, § 9.) AB 2138 also authorized the Board to deny a license based on prior disciplinary misconduct. Accordingly, the proposal is necessary to account for denials on this ground.

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when denying a license. The extent to which a person complied with the terms of parole or probation is already a factor DCA boards often consider when evaluating rehabilitation. (See 16 CCR § 1020, subd. (c)(4).) However, courts historically reject the view that complaint applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole.”].) Nonetheless, under AB 2138, the Board must now consider whether an applicant who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

Subdivision (b) of the proposal sets forth that if subdivision (a) is inapplicable, or if the Board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the Board may find that the applicant made a showing of rehabilitation and is presently eligible for a license by using criteria in subdivision (b). Each of these criteria are designed to focus the Board’s evaluation on facts and circumstances relevant to an applicant’s rehabilitation, so that the Board knows the relevant criteria it must review to make the determination as to the applicant’s rehabilitation. In addition, to provide uniformity with other DCA boards, the proposed criteria were adopted by the Board pursuant to DCA’s recommended rehabilitation criteria.

In addition, the Board will consider the nature and gravity of the crime or act for the same reasons as discussed for subsection (a). This is the offense or misconduct against which the Board will judge the applicant’s rehabilitation. The Board will also consider evidence of acts or crimes committed after the act or crime that is the basis for denial. Such acts or crimes typically reflect additional misconduct by the applicant and bear on the Board’s decision regarding whether the applicant is sufficiently rehabilitated to be licensed and conform to the requirements of licensure. Further, the Board would consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person’s rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation.

The Board will consider whether the applicant complied with parole, probation, restitution or other sanctions imposed on the applicant. The information embraced in

this criterion bears on an applicant's rehabilitation in terms of the applicant's willingness to make amends from prior misconduct and willingness to conform to the rules of licensure. Thus, it is necessary for the Board to consider these elements to evaluate an applicant's reformation from prior misconduct.

The Board would also consider rehabilitation evidence the applicant submitted, as the Board is required to consider such evidence under B & PC section 481, subdivision (c). This proposal is necessary in order to consolidate the Board's rehabilitation criteria in one regulatory section.

### **Section 1136, subdivision (c)**

Purpose: The purpose of adding section 1136, subdivision (c) is to clarify that the Board shall employ the same criteria specified in proposed subdivisions (a) and (b) of section 1136 for petitions for reinstatement of a license, and petitions for modification or termination of probation, so that similarly-situated licensees have the opportunity to be evaluated by the Board under the same set of criteria. This proposal is intended to provide predictability in the reinstatement and modification (of probation) process and also provide uniformity in the application of rehabilitation criteria to former and current licensees.

Anticipated Benefit: The regulatory proposal would provide clarity and transparency to the petitioner by listing the specific criteria the Board must consider in evaluating evidence of rehabilitation submitted by the petitioner. The proposal would also apprise pertinent parties to administrative adjudication, e.g. the Deputy Attorney General, Administrative Law Judge, Respondent, and Respondent's counsel, regarding the specific criteria used by the Board to determine whether a licensee is sufficiently rehabilitated to warrant reinstatement or modification of penalty or specific terms of disciplinary probation.

Rationale: B & PC section 1905, subdivision (a)(7) authorizes the Board to deny, suspend, or revoke a license under their purview. Additionally, B & PC section 1906, subdivision (a) authorizes the Board to adopt, amend and revoke such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Dental Practice Act related to RDHs.

To implement AB 2138 and maintain consistency in how the Board evaluates rehabilitation evidence between license denials and discipline, it is necessary for the Board to promulgate regulations that establish criteria for evaluating rehabilitation when deciding whether to reinstate, modify or terminate probation. The information embraced in this proposal bears on a petitioner's rehabilitation in terms of the petitioner's willingness to make amends from prior misconduct and willingness to conform to the



rules of licensure. Accordingly, it is necessary for the Board to consider rehabilitation criteria to evaluate a petitioner's reformation from prior misconduct.

**Add section 1137 of Article 10 of Division 11 of Title 16 of the CCR (Rehabilitation Criteria for Suspensions and Revocations)**

**Section 1137, subdivision (a)**

Purpose: The purpose of adding CCR section 1137, subdivision (a) is to comply with the statutory requirements of AB 2138, section 9, and B & PC section 482, subdivision (b)(1), which requires the Board to consider whether a licensee has made a showing of rehabilitation if the licensee has completed the criminal sentence at issue without a parole or probation violation. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also seeks to provide a specific list of criteria for the Board to consider for licensees. For uniformity purposes, the proposal follows the same approach as section 1136, subdivision (a), concerning Board applicants. The list of criteria is narrow in scope and limited to considerations relevant to the crime and the criminal sentence, since AB 2138 requires the Board to consider rehabilitation in the narrow context of a licensee who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the disciplinary process and uniformity of rehabilitation criteria with other DCA boards.

Anticipated Benefit: The proposed addition to CCR section 1137, subdivision (a) is intended to provide transparency and clarity to licensees who have completed their criminal sentence without a violation of parole or probation. Providing the narrow list of rehabilitation criteria would help licensees understand the facts and documents to present to the Board to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, licensees who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria applicable to the licensee.

Rationale: Existing law required boards to develop criteria to evaluate the rehabilitation of a licensee when considering disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (B & PC, § 482.) Additionally, B & PC section 1905, subdivision (a)(7) authorizes the Board to deny, suspend, or revoke a license under their purview. Furthermore, B & PC section 1906, subdivision (a) authorizes the Board to adopt, amend and revoke such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Dental Practice Act related to RDHs.

To implement AB 2138 and maintain consistency in how the Board evaluates

rehabilitation evidence between license denials and discipline, it is necessary for the Board to draft regulations that establish criteria for evaluating rehabilitation, when deciding whether to suspend or revoke a license based on a conviction. (B & PC, § 482, subd. (a), as added by AB 2138, § 9.)

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

The extent to which a person complied with the terms or parole or probation is already a factor DCA boards often consider when evaluating rehabilitation. (See 16 CCR section 1020, subd. (c)(4).) However, courts historically reject the view that complaint applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole.”].) Nonetheless, under AB 2138, the Board must now consider whether a licensee who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

The proposal specifies the following criteria for the Board to consider when making the determination that the licensee who has successfully completed the criminal sentence has made a showing of rehabilitation:

- the nature and gravity of the crime(s);
- the length(s) of the applicable parole or probation period(s);
- the extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified;
- the terms or conditions of parole or probation and the extent to which they bear on the licensee’s rehabilitation; and
- the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

The criteria are necessary to assist the Board in evaluating rehabilitation. The purpose

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

The Board must consider the nature and gravity of the crime, because this is the offense against which the licensee's rehabilitative efforts will be evaluated. The Board will consider the length of the applicable parole or probation period, because the length of time that the licensee served probation or parole without a violation is relevant to whether the licensee is rehabilitated and will comply with licensure requirements in the future. (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 Board must consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the licensee is sufficiently rehabilitated.

The Board must consider the terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation, because the actual parole or probation terms can inform the Board on whether the licensee is rehabilitated. For instance, in cases where a licensee was convicted of a crime involving alcohol, probation terms requiring the licensee to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the licensee's rehabilitation. (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 Board 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 Board's determination. For instance, if correctional authorities removed terms of parole or probation due to the licensee's good behavior, this would bear on the Board's evaluation of the licensee's rehabilitation and willingness to conform to the rules of licensure.

## Section 1137, subdivision (b)

Purpose: The purpose of adding CCR section 1137, subdivision (b) is to conform to changes the Board proposes to implement regarding AB 2138, section 9, and B & PC section 482, subdivision (b)(2), which require the Board to consider whether an applicant has made a showing of rehabilitation if: (1) the applicant has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Board does not find that the applicant made a sufficient showing of rehabilitation based on a narrow set of criteria; or, (3) the Board's decision is based on something other than a crime. Likewise, the Board would consider the rehabilitation criteria in subdivision (b) if: (1) a licensee has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Board does not find that the licensee made a sufficient showing of rehabilitation based on the narrow criteria in subdivision (a); or, (3) the Board's decision is based on something other than a crime, such as out-of-state discipline under B & PC section 141.

As AB 2138 does not prescribe new rehabilitation criteria, the proposal also provides a specific, more comprehensive list of criteria for the Board to consider for these licensees, which is not limited to the applicable parole or probation. The list of criteria that the Board will utilize to consider whether an applicant made a showing of rehabilitation is as follows:

- The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- Total criminal record.
- The time that has elapsed since commission of the act(s) or crime(s) referred to in subsection (b)(1) or (b)(2).
- 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 criteria in subdivision (a)(1)-(5), as applicable.
- If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.
- Evidence, if any, of rehabilitation submitted by the applicant.

The list of criteria anticipates that the Board may be considering "acts" that are the basis discipline, since the Board may be evaluating the rehabilitation of a licensee where the basis for discipline involves acts of professional misconduct, rather than a conviction. In addition, the list of criteria incorporates the criteria from subdivision (a) for licensees convicted of a crime, so that similarly-situated licensees have the opportunity to be evaluated by the Board under the same set of criteria. Further, this proposal is also intended to provide predictability and consistency in the licensing and disciplinary

process, and uniformity of rehabilitation criteria with other DCA boards.

Anticipated Benefit: The proposed addition to CCR section 1137, subdivision (b) would provide transparency and clarity to licensees who have not completed their criminal sentence without a violation of parole or probation, or otherwise do not qualify for consideration under subdivision (a). Providing the list of rehabilitation criteria would help licensees understand the facts and documents to present to the Board to demonstrate their rehabilitation. The proposal would also assist pertinent parties to administrative adjudication, e.g., the Deputy Attorney General, the Administrative Law Judge, and the licensee’s counsel, in advocating for or against, or deciding upon, licensees who do not qualify for consideration under subsection (a), by listing rehabilitation criteria applicable to the licensee.

Rationale: Existing law required boards to develop criteria to evaluate the rehabilitation of a licensee when considering disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (B & PC, § 482.) Additionally, B & PC section 1905, subdivision (a)(7) authorizes the Board to deny, suspend, or revoke a license under their purview. Furthermore, B & PC section 1906, subdivision (a) authorizes the Board to adopt, amend and revoke such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Dental Practice Act related to RDHs.

To implement AB 2138 and maintain consistency in how the Board evaluates rehabilitation between license denials and discipline, it is necessary for the Board to draft regulations that establish criteria for evaluating rehabilitation, when deciding whether to suspend or revoke a license based on a conviction. (B& PC, § 482, subd. (a), as added by AB 2138, § 9.)

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

The extent to which a person complied with the terms or parole or probation is already a factor DCA boards often consider when evaluating rehabilitation. (See 16 CCR section 1020, subd. (c)(4).) However, courts historically reject the view that complaint applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of*

*Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole.”].) Nonetheless, under AB 2138, the Board must now consider whether a licensee who has complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria. If, however, the licensee did not comply with the terms of parole or probation, the Board would apply its standard rehabilitation criteria, as set forth in this proposal.

Each of these criteria are designed to focus the Board’s evaluation on facts and circumstances relevant to a licensee’s rehabilitation, so that the Board knows the relevant criteria it must review to make the determination as to the licensee’s rehabilitation. In addition, to provide uniformity with other DCA boards, the proposed criteria were adopted by the Board pursuant to DCA’s recommended rehabilitation criteria.

The Board will consider the nature and gravity of the crime or act for the same reasons as discussed for subdivision (a). The Board will also consider evidence of the licensee’s total criminal record. It is necessary for the Board to consider the licensee’s total criminal record because additional prior or subsequent misconduct by the licensee is relevant to the Board’s decision regarding whether the licensee is sufficiently rehabilitated to be licensed and the licensee’s willingness to conform to the requirements of licensure.

The Board would consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person’s rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation.

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

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

rehabilitation under the criteria in subdivision (a), the Board would apply the broader criteria in subdivision (b). In this manner, similarly-situated licensees potentially subject to discipline based on a conviction, have the benefit of the same set of criteria.

In addition, the Board would consider evidence that a licensee's conviction was dismissed pursuant to Penal Code section 1203.4. It is necessary to consider dismissal proceedings because they are relevant to the Board's evaluation of whether a licensee has complied with the terms and conditions of his or her criminal probation and is therefore rehabilitated. The Board would also consider rehabilitation evidence the licensee submitted. This requirement is necessary in order to maintain consistency between the Board's evaluation of rehabilitation in the licensing and discipline context.

### **Underlying Data:**

Technical, theoretical or empirical studies, reports, or documents relied upon (if any):

- Assembly Bill (AB) 2138 (Chapter 995, Statutes of 2018)
- Minutes: DHBC Legislative & Regulatory Subcommittee Meeting, April 12, 2019
- Proposed Language for AB 2138 provided at the DHBC Legislative & Regulatory Subcommittee Meeting, April 12, 2019
- Minutes: DHBC Full Board Meeting, April 13, 2019

### **Business Impact:**

The proposed regulations will not have a significant adverse economic impact on businesses as the regulations do not directly affect businesses. This initial determination is based on the purpose of AB 2138, which sought to reduce barriers to licensure for applicants and licensees with criminal histories or licensure discipline. It is also based on the lack of testimony at the Board's meeting that the regulation would impact businesses. The Board anticipates that the proposed regulations will impact businesses to the extent that individual applicants or licensees are able to be licensed or retain licensure under the proposal.

The Board issues approximately 800 licenses per year. In the Board's history, it has reviewed seventeen (17) applications in which the applicants had criminal convictions, and in these cases, issued probationary licenses to these applicants. Accordingly, the Board does not expect that the proposed regulations will significantly impact the number of licensees who are able to obtain licensure.

### **Economic Impact Assessment:**

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- It will not create new businesses or eliminate existing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- It will not affect the expansion of businesses currently doing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- This regulatory proposal benefits the health and welfare of California residents because it would increase their access to licensed dental hygienists.
- This regulatory proposal does not affect worker safety because it establishes criteria, based upon recent statutory mandates for licensure following the applicant's or licensee's criminal conviction. It does not involve worker safety.
- This regulatory proposal does not affect the state's environment because it only regulates license applicants and licensees and their qualifications for licensure following a criminal conviction or disciplinary action. It does not involve environmental issues.

**Specific Technologies or Equipment:**

This regulation 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 action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Take no action: This alternative was rejected as AB 2138 mandates regulations to be created by boards to revise their existing regulations governing substantially-related crimes or acts, and rehabilitation criteria. Therefore, in order to establish a system governing substantially-related crimes or acts for the purposes of denial, suspension or revocation of a license by the Board, a regulation must be adopted.



2. Adopt the proposed regulations: The Board determined that this alternative is the most feasible as it creates a regulatory framework governing substantial relationship and rehabilitation criteria for the purposes of denial, suspension or revocation of a license by the Board. Without this regulation, the Board would not be in compliance with the mandated requirements of AB 2138.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2005 Evergreen Street, Suite 2050, Sacramento, California 95815.