



DATE	December 17 - 18, 2020
TO	Board Members, Acupuncture Board
FROM	Kristine Brothers, Policy Coordinator
SUBJECT	Discussion and Possible Action regarding Regulations as a result of AB 2138 Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction

Background

At its March 28, 2019 meeting, the Board approved regulatory language to implement Assembly Bill 2138 (AB 2138) (Chiu, Chapter 995, Statutes of 2018). On June 26, 2020, staff brought further changes to the previously proposed regulations to conform to the directives from the Office of Administrative Law (OAL) and the other Department of Consumer Affairs (DCA) programs' AB 2138 packages. These changes were mostly technical in nature, but also included some substantive changes as well. The Board moved to approve the modified language.

Key provisions of AB 2138, which became effective on July 1, 2020, are as follows:

1. Only permits a board to deny a license on grounds that an applicant has been convicted of a crime or has been subject to formal discipline if either of these are met (Business and Professions Code (BPC) §480(a)):
 - a. The conviction was within 7 years of the date of the application and is substantially related to the qualifications, functions, or duties of the profession. The 7-year limit does not apply to convictions for a serious felony (defined in Penal Code §1192.7), or for those who must register as a sex offender, as described in Penal Code §290(d)(2) or (3).
 - b. The applicant has been subject to formal discipline by a licensing board within the past 7 years for professional misconduct that would have been cause for disciplinary action by the Board and is substantially related to the profession. Note: the prior disciplinary action cannot be used to deny if it was based on a dismissed or expunged conviction.
2. Prohibits a board from requiring that an applicant for licensure disclose information about his or her criminal history. However, a board is permitted to request information for the purpose of determining substantial relationship or evidence of rehabilitation. In such a case, the applicant must be informed that the disclosure is voluntary and failure to disclose will not be a factor in a board's decision to grant or deny an application (BPC §480(f)(2)).
3. Requires each board to develop criteria to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession. These criteria are required to be considered when considering the denial,

suspension, or revocation of a license. By law, boards are required to adopt regulations that include all of the following criteria (BPC § 481):

- a) The nature and gravity of the offense.
 - b) The number of years elapsed since the date of the offense.
 - c) The nature and duties of the profession in which the applicant seeks licensure or is licensed.
4. Prohibits a board from denying a license based on a conviction without considering evidence of rehabilitation (BPC §481).
 5. Requires each board to develop criteria to evaluate rehabilitation when considering denying, suspending, or revoking a license. A showing of rehabilitation shall be considered if the applicant or licensee has been completed their criminal sentence without a violation of parole or probation, or if the board finds its criteria for rehabilitation has been met (BPC §482).

To successfully adopt, amend or repeal a regulation, the Board is required to meet the following standards in the Administrative Procedure Act (APA): (1) necessity, (2) authority, (3) clarity, (4) consistency, (5) reference, and (6) nonduplication (Government Code §11349.1).

On January 31, 2020, the Board noticed the regulation proposal and gave the public forty-five (45) days to provide public comment ending on March 17, 2020. The public comment period was extended to April 30, 2020 and a public hearing was conducted on that date. Public comment was received on April 20, 2020 (see Attachment A).

Additionally, the Board issued an amended notice on September 18, 2020 to correct how the proposed rulemaking was noticed and properly provide the proposed text to all interested parties. The amended notice gave an additional forty-five (45) days to provide public comment, ending on November 3, 2020. No public hearing was requested or conducted. Additional public comment was received on September 21, 2020 (see Attachment B).

On June 26, 2020, the Board amended the text to include revisions that were determined necessary during the Office of Administrative Law's (OAL) review of another DCA Board's AB 2138 package. These revisions were determined to be necessary, by the Board, to comply with OAL's request to clarify the Board's prior language, since all of DCA's entities used the same drafting template on their AB 2138 packages. The Board's modified text was noticed on November 24, 2020, allowing the public fifteen (15) days to provide public comment ending on December 10, 2020. No public hearing was requested or conducted.

Summary of Comments Received and Proposed Board Responses

First Letter:

Faride Perez-Aucar of Root and Rebound Reentry Advocates and Vinuta Naik of Community Legal Services of East Palo Alto, submitted a letter commenting on the Board's implementation of Assembly Bill 2138, dated January 31, 2020 (Attachment A).

Perez-Aucar and Naik submitted all comments, below, on behalf of their respective organizations, along with A New Way of Life Reentry Project, Californians for Safety and Justice, Center for Employment Opportunities, Center for Living and Learning, Criminal Justice Clinic, UC Irvine School of Law, East Bay Community Law Center, Legal Aid at Work, Legal Services for Prisoners with Children, All of Us or None, Los Angeles Regional Reentry Project, National Association of Social Workers, California Chapter, REDF, The Record Clearance Project, San Jose State University, Rubicon Programs, and Underground Scholars Initiative.

Below is a summary of each comment and a recommended response for the Board to consider and approve. The responses were prepared in consultation with, and based upon, direction given by the Board's Executive Officer.

Initial Comment: General Statement/ Purpose of the Letter

Summary:

The letter states that the organizations supporting the letter believe the proposal should go further in order to fully implement the intention and spirit of the AB 2138 text. They believe there is a lack of clarity in the licensure process for individuals who have been impacted by the criminal justice system that leads many of them to give up. They believe the proposed regulations leave gaps and fail to implement BPC Sections 480, 481, 482, and 493 and fall short of the intent of the bill to combat discrimination against people with records who have demonstrated rehabilitation and are seeking a professional career.

Proposed Response:

The Board rejects this comment.

The purpose of the proposed regulations is to clarify substantial relationship criteria and criteria for rehabilitation, as required by BPC Section 481. In particular, consistent with the requirements enacted by AB 2138, these regulations would adopt all of the following criteria, which would assist the Board with a balanced approach to evaluating an applicant's eligibility for licensure:

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

Further, clarifying how to determine whether a crime is substantially related and clarifying the factors that will be considered when evaluating rehabilitation should assist applicants and licensees with demonstrating their rehabilitation.

1. Comment #1

Summary:

The letter says the proposed regulations should include the 7-year washout period for consideration of convictions or discipline which are not considered serious felonies under the Penal Code Section 1192.7. (BPC §480(a))

Proposed Response:

The Board appreciates The Board appreciates this comment but has determined that no changes to the text are necessary in response.

The seven-year period during which a board can deny a license for a conviction or formal discipline is fully described in BPC section 480(a)(1). As this is already included in statute, adding this provision is duplicative of BPC section 480 and therefore it is not necessary to repeat it in the regulations.

2. Comment #2

Summary:

The letter asks that proposed regulations should provide that a person with a criminal history shall not be denied a license if the applicant has obtained a Certificate of Rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41 or 1263.42, or an arrest which led to an infraction/citation or a disposition other than conviction, or juvenile adjudication. (BPC §480(b-d))

Proposed Response:

The Board appreciates this comment but has determined that no changes to the text are necessary in response.

BPC section 480(c) already states that a license may not be denied based on a conviction, or its underlying acts, if it has been dismissed or expunged pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42. In addition, BPC section 480(b) prohibits license denial if the applicant has obtained a certificate of rehabilitation, was granted clemency or a pardon, or has made a showing of rehabilitation per BPC section 482. BPC section 480(d) prohibits license denial based on arrest that resulted in something other than a conviction, such as an infraction, citation, or juvenile adjudication. As noted above, BPC section 480(b-d) explicitly prohibit denial of a license in those specific circumstances.

Since these provisions are already specifically covered in statute, adding them again in regulation would be duplicative. Therefore, it is not necessary to repeat them in regulations.

3. Comment #3

Summary:

The letter states that the regulations fail to include that the Board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. (BPC §480(f)(2))

Proposed Response:

The Board appreciates this comment but has determined that no changes to the text are necessary in response.

BPC Section 480(f)(2) already covers this in detail. It would therefore be duplicative of the statute and not necessary to repeat this in the regulations.

4. Comment #4

Summary:

The letter states that the regulations fail to include that the Board must notify the applicant in writing if the applicant is denied or disqualified from licensure. The letter also states the Board must have procedures in place for the applicant to challenge a decision or to request re-consideration, and that the applicant has a right to appeal the Board's decision and the process of requesting a complete conviction history. (BPC §480(f)(3))

Proposed Response:

The Board appreciates this comment but has determined that no changes to the text are necessary in response.

BPC Sections 480(f)(3), and 485 through 487, and the California Administrative Procedure Act commencing at Government Code Sections 11500, already contain these requirements, including requirements for providing the legal and factual basis for the denial, service of the denial on the applicant, and notice to the applicant regarding the opportunity to request a hearing to challenge the decision. It would therefore be duplicative of these statutes and not necessary to repeat this in the regulations.

5. Comment #5

Summary:

The letter states that the intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. The letter also states that merely looking to law enforcement will not adequately show how an applicant would do on the job. The letter further says rehabilitation can and does take many forms that extend beyond mere law enforcement supervision and recommends that the Board provide examples of evidence of mitigating circumstances and rehabilitation efforts to better define rehabilitation and to assist both the Board and licensing applicants.

Proposed Response:

The Board appreciates this comment but has determined that no changes to the text are necessary in response.

BPC Section 482 requires boards to develop criteria to evaluate rehabilitation and to consider whether an applicant or licensee has made a showing of rehabilitation if either the criminal sentence has been completed without violation of probation or parole, or if the board otherwise finds the applicant rehabilitated.

Therefore, sections 1399.133, 1399.134, 1399.156.2, and 1399.156.3 of the proposal would provide two-step rehabilitation guidance for the Board in complying with this law:

- First, the Board must determine if the completion of the criminal sentence with no violations constitutes rehabilitation. Consistent with the direction in AB 2138, to consider rehabilitation if an applicant completes the criminal sentence at issue without a violation of parole or probation, specific criteria are being added to sections 1399.133, 1399.134, 1399.156.2, and 1399.156.3 to help the Board determine whether sentence completion demonstrates rehabilitation. Criteria the Board is proposing include length of the parole or probation, whether it was shortened or lengthened and the reasons, and any modifications to the parole or probation that may have been made. This represents the first step and includes probation or parole reports, because these are an indication of how well compliance was achieved. However, if the Board does not find rehabilitation based solely on sentence completion, there is still a second step that must be considered. An applicant can show rehabilitation as proposed in subdivision (b) of the regulations.
- The second step, if rehabilitation is not demonstrated solely based on the sentence completion, is that the Board must consider certain other criteria to evaluate rehabilitation. This includes nature and severity of the crime, time elapsed since the crime, evidence of any subsequent crimes or conduct, compliance with probation or parole, and evidence of rehabilitation submitted by the applicant or licensee. A general category permitting submission of any rehabilitation evidence allows an applicant to demonstrate volunteer or charity work, furthered education, successful employment, or any other activities that they choose to submit to be considered by the Board. The Board can and already does give serious consideration to these factors when considering whether an applicant or licensee is rehabilitated.

There are many possible ways of showing rehabilitation, and many unique scenarios of mitigating circumstances. Attempting to specifically list some but not others may be limiting or misleading to the applicant and to the staff of the Board. In addition, the circumstances of each enforcement case are unique and what is sufficient evidence of rehabilitation for one case may not suffice for another or may not be relevant for all types of crimes (e.g., attendance at Alcoholics Anonymous is a common demonstration of rehabilitation for alcohol-related crimes but is not a good example of rehabilitation for a crime where alcohol was not involved).

The Board believes that the proposed regulations adequately address the rehabilitation issues while allowing the applicant the flexibility to provide evidence that specifically addresses their rehabilitative efforts relative to a crime or misconduct on a case-by-case basis.

6. Comment #6

Summary:

The letter states that the regulations fail to mention requirements to obtain statistical information on the number of applicants with a criminal record who apply and receive notice of denial or disqualification of licensure, provided evidence of mitigation or rehabilitation, and the final disposition of the application, and demographic information. (BPC §480(g)(1-2))

Proposed Response:

The Board appreciates this comment but has determined that no changes to the text are necessary in response.

These requirements are already stated in statute in BPC Section 480(g)(1-2). It would therefore be duplicative of the statute and not necessary to repeat this in the regulations.

Second Letter

The Board received a letter from Licensed Acupuncturist, Dixie Wall. Ms. Wall's comments relate to her own experience with being denied an acupuncture license for a substantially related conviction involving substance abuse when she initially applied. Ms. Wall also spoke about her experience when she came to a Board meeting and petitioned for early termination of her probation when she was already about 14 years recovered and had two years of exemplary behavior while on probation with the Board. Her petition was denied by the Board. Ms. Wall expressed an overall support for the proposed regulations and a change in Board policy.

1. Comment

Summary:

Ms. Wall states that testimonials from the public including letters of recommendation add some weight.

Proposed Response:

The Board appreciates this comment but has determined that no changes to the text are necessary in response.

When considering the denial of a license under Section 480 of the Business and Professions Code on the ground that the applicant was convicted of a crime, the Board shall consider whether the applicant made a showing of rehabilitation. The Board's proposed regulation, California Code of Regulations section 1399.469.5 subsection (b), Criteria for Rehabilitation – Denial of Licensure, already identifies that the Board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering specified criteria, the Board finds that the applicant is rehabilitated. One of the specified criteria, under paragraph (6), is the Board shall consider evidence, if any, of rehabilitation submitted by the applicant. This would include things like testimonials and letters of recommendation, as mentioned by Ms. Wall.

Action Requested

Review the proposed responses and consider whether to accept or reject the comments. After review, the Board may consider any of the following actions:

- Option 1 (If Board Members agree with the proposed responses):

Direct staff to accept the comments, but reject the action(s) requested in the proposed comments, provide the responses to the comments (as indicated in the meeting materials) and use when completing the regulatory process, as authorized by motion at the Board's June 26, 2020, meeting.

- Option 2 (If Board Members have any edits to the proposed responses or wish to accept any comments or make any text changes):

Direct staff to accept the recommendations made by the commenters in specific comments and make edits to the proposed regulatory text, as identified, but otherwise reject the comments, as set forth in the meeting materials.

Attachments:

Attachment A – April 30, 2020 Public Comment from Faride Perez-Aucar and Vinuta Naik et al.

Attachment B – September 21, 2020 Public Comment from Dixie Wall (redacted)



COMMUNITY
LEGAL SERVICES
IN EAST PALO ALTO



Center for
Employment
Opportunities

April 30, 2020

Via Email and Facsimile

California Department of Consumer Affairs
California Acupuncture Board
ATTN: Alex Dodge, Policy, Legislative, and Regulatory Affairs Analyst
1747 N. Market Blvd., Suite 180
Sacramento, CA 95834
Email: acupuncture@dca.ca.gov
Alex.Dodge@dca.ca.gov

**RE: Comments in Response to Dept. of Consumer Affairs, California Acupuncture Board
Regulatory Action Concerning the Implementation of AB 2138, Proposal to Amend
Sections 1399.469.4, 1399.469.5, and 1399.469.6 of Article 6, of Chapter 13.7, of Title
16 of the California Code of Regulations**

Dear Alex Dodge:

Thank you for the opportunity to submit comments to the Department of Consumer Affairs (“DCA”), Acupuncture Board (“Board”) regarding proposed regulations to implement AB 2138.

Assembly Bill 2138 was authored by Assemblymembers David Chiu and Evan Low to help formerly incarcerated people have a fair chance at obtaining occupational licensure. AB 2138 was sponsored by the Anti-Recidivism Coalition, East Bay Community Law Center, Legal Services for Prisoners with Children, Root & Rebound and supported by a coalition of 50 organizations. Thanks to the passage of AB 2138 in 2018, the roughly 1 in 3 or 8 million Californians with arrest or conviction records will face fewer barriers to employment and will help to fill the much needed occupational employment gaps in the State.

Formerly incarcerated workers strive to obtain permanent, stable, and living wage jobs, however around 30% of jobs require licensure, clearance, or oversight by a governing body. This oversight, while intended to protect public safety, disproportionately impacts people of color, low-income, and indigent communities of people. These communities have been disproportionately impacted by over-policing and over-criminalization resulting in contacts with law enforcement that bar these applicants from later obtaining the licensure they require to pursue employment under DCA’s regulation. Moreover, applicants have been deterred by the lengthy process, lack of clarity, and obstacles to obtaining licensure – problems that AB 2138 seeks to rectify to offer a fair chance to all people.

However, across the state of California, there are only a handful of organizations that support low-income and indigent people seeking occupational licensure. Licensure applicants look for help answering questions about general eligibility, the initial application, appeals, probationary and restricted licenses, and license revocations or suspensions. The lack of clarity in this process and lack of low-cost or free service providers, leads many people facing differing levels of adversity to give up entirely. We believe that our direct experience with clients who are undergoing this difficult process, along with our involvement in the drafting and passage of AB 2138, makes us equipped to understand the proper implementation of this bill.

The undersigned organizations commend the Board for its action to implement AB 2138 and thereby reduce discrimination against people of color in California, who are disproportionately denied job opportunities because of occupational licensing-related conviction background checks. We support amendments to sections 1399.469.4, 1399.469.5, and 1399.469.6 of Article 6, of Chapter 13.7, of Title 16 of the California Code of Regulations to reflect the passage of Assembly Bill 2138, Chiu, but believe the proposed amendments should be clarified and go further in order to fully implement the intention and spirit of the AB 2138 text.

The proposed regulations leave some gaps in the regulatory scheme under the changes to CA Business and Professions Code sections 480, 481, 482, and 493 as modified by AB 2138. These proposed regulations fail to meet and implement CA B&P Code sections 480, 481, 482, and 493 and are not, as currently written, valid. The proposed regulations also fall short of the intent of the bill, which includes combating discrimination against people with records that have demonstrated rehabilitation and seek to establish themselves professionally.

Specifically, the proposed regulations do not comply with AB 2138 as follows:

- Section 1399.469.4 should note that criminal history that resulted in the applicant obtaining a Certificate of Rehabilitation, pardon, dismissal per Penal Code section 1203.4 *et seq.*, or an arrest that resulted in a disposition other than a conviction **shall** not be denied a license. See Business and Professions Code section 480(b)-(d).
- Sections 1399.469.5 and 1399.469.6, as written, rely too heavily on law enforcement's reports and determination of the applicant's progress. Rehabilitation can and does take many forms that the current language does not fully embrace. Please see number 5 below for examples of rehabilitation to expand the proposed regulations.

Further, we urge the Board to incorporate the full extent of AB 2138 by including the following provisions:

1. The proposed regulations should include the 7 year washout period for consideration of convictions or discipline which are not statutorily considered serious felonies under the Cal. Penal Code. 1192.7. See Cal Business and Professions Code section 480(a).
2. The proposed regulations should provide that a person with a criminal history **shall not** be denied a license if the applicant has obtained a Certificate of Rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.42, or an arrest which led to an infraction/citation or a disposition other than a conviction, or juvenile adjudication. See Cal Business and Professions Code section 480(b)-(d).
3. The proposed regulations fail to include that the board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. See Cal Business and Professions Code section 480(f)(2).

4. The proposed regulations fails to include that the board shall notify the applicant in writing if the applicant is denied or disqualified from licensure. The Board must provide procedures describing the process for the applicant to challenge the decision or to request re-consideration, that the applicant has a right to appeal the board's decision, and the process of requesting a complete conviction history. See Cal Business and Professions Code section 480(f)(3).

5. The intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. Merely looking to law enforcement will not adequately show how an applicant would do on the job. Rather, rehabilitation can and does take many forms that extend beyond mere law enforcement supervision. To better define rehabilitation, we recommend that the board provide examples of evidence of mitigating circumstances and rehabilitation efforts to assist both the Board and licensing applicants.

For instance, the Board should consider adding the following rehabilitation criteria:

- Volunteer service;
 - Successful employment in a related field;
 - A history of work experience in an employment social enterprise;
 - Unpaid work in the community;
 - Furthered education;
 - Abstinance from controlled substances and/or alcohol;
 - Stability of family life, fulfillment of parental and familial responsibilities;
 - New and different social and business relationships from those which existed at the time of the underlying charges at issue;
 - Change in attitude of the applicant as evidenced by:
 - Personal testimony,
 - Evidence of rehabilitation submitted by the applicant,
 - Evidence from family, friends, and/or other persons familiar with the applicant's previous behavior patterns and subsequent attitude and behavioral changes, and;
 - Other markers of rehabilitation.
-
6. The proposed regulations fail to include any mention of requirements to obtain statistical information on the number of applicants with a criminal record who apply and receive notice of denial/disqualification of licensure, provided evidence of mitigation or rehabilitation, the final disposition of the application, and demographic information. See Cal Business and Professions Code section 480(g).

Adequate implementation of the changes to California Business and Professions Code sections 480, 481, 482, and 493 will go a long way toward restoring hope and opportunity for the nearly 1 in 3 or 8 million Californians who have an arrest or conviction record. Thank you for your consideration.

If you have any questions regarding the content of these comments, please contact Faride Perez-Aucar (Root and Rebound) or Vinuta Naik (Community Legal Services in East Palo Alto).

Sincerely,

/s/ Faride Perez-Aucar

Faride Perez-Aucar
510-279-4662
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/s/ Vinuta Naik

Vinuta Naik
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vnaik@clsepa.org

Organizations:

A New Way of Life Reentry Project
Californians for Safety and Justice
Center for Employment Opportunities
Center for Living and Learning
Community Legal Services in East Palo Alto
Criminal Justice Clinic, UC Irvine School of Law
East Bay Community Law Center
Legal Aid at Work
Legal Services for Prisoners with Children, All of Us or None
Los Angeles Regional Reentry Project
National Association of Social Workers, California Chapter
REDF
The Record Clearance Project, San Jose State University
Root and Rebound
Rubicon Programs
Underground Scholars Initiative

From: [Dixie Wall](#)
To: AcuPolicy@DCA
Subject: Hello
Date: Monday, September 21, 2020 10:30:32 PM

[EXTERNAL]: [REDACTED]

CAUTION: THIS EMAIL ORIGINATED OUTSIDE THE DEPARTMENT OF CONSUMER AFFAIRS!

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Hi Kristine,

Wow. Its really nice to hear from Ben and you in regard to changing some of the policies around past history of substance abuse. I wish I could come and give my testimony. [REDACTED]

[REDACTED] Do you know how I can help? any suggestions? I think the worst part about it was being on hold for a year initially and after two years of exemplary behavior I flew to SF to get off probation early and was denied at 14 or whatever it was years sober(now I'm almost 20 year sober now) [REDACTED] because I'd only done two years of probation. I would also suggest that testimonials from the public including letters of recommendation add some weight I had stacks of letters from women I've helped doctors I had worked for etc. I know you deal with this stuff everyday so let me know how I can help? They must protect the public, but the public needs licensed acupuncturists that are recovered from drug and alcohol addiction to help the cases that are. I've been able to help hundreds and its been extremely rewarding. Thank you and so good to hear that your still working the the acupuncture aboard and that Ben is the ED.

Dixie Wall, LAc
14079

Acupuncture Board
AB 2138 Implementation – Proposed Regulation for
Substantial Relationship Criteria

Changes proposed are underlined to denote new text.

Adopt new section under Article 6 Miscellaneous Provisions of Chapter 13.7 of Title 16 of the California Code of Regulations:

§ 1399.469.4 Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(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 an acupuncturist.

Note: Authority cited: Sections 481, 493, 4933, Business and Professions Code.
Reference: Sections 141, 480, 481, 490, 493, 4955(b), 4955(h), 4955(j), and 4956,
Business and Professions Code.

Acupuncture Board
AB 2138 Implementation – Proposed Regulation for
Criteria for Rehabilitation for Denials

Changes proposed are underlined to denote new text.

Adopt new section under Article 6 Miscellaneous Provisions of Chapter 13.7 of Title 16 of the California Code of Regulations:

§ 1399.469.5 Criteria for Rehabilitation – Denial of Licensure.

(a) When considering the denial of a license under Section 480 of the Business and Professions Code on the ground that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

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

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

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

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

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

(5) The criteria in subdivision (a)(1)-(5), as applicable.

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

Note: Authority cited: Sections 482 and 4933, Business and Professions Code.

Reference: Sections 480, 481, 482, 488, 493, 4938, 4944, 4955, 4955.1, 4955.2, and 4956, Business and Professions Code.

Acupuncture Board
AB 2138 Implementation – Proposed Regulation for
Criteria for Rehabilitation for Suspensions or Revocations

Changes proposed are underlined to denote new text.

Adopt new section under Article 6 Miscellaneous Provisions of Chapter 13.7 of Title 16 of the California Code of Regulations:

§ 1399.469.6 Criteria for Rehabilitation – Suspensions or Revocations.

(a) When considering the suspension or revocation of a license on the ground that a person holding a license under the Acupuncture Licensure Act has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation and is presently eligible for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

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

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

- (1) The nature and severity of the act(s) or crime(s).
- (2) The total criminal record.
- (3) The time that has elapsed since commission of the act(s) or crime(s).

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

(5) The criteria in subdivision (a)(1)-(5), as applicable.

(6) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.

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

Note: Authority cited: Sections 482 and 4933, Business and Professions Code.

Reference: Sections 141, 480, 481, 482, 488, 493, 4955, 4955.1, 4955.2, and 4956, Business and Professions Code.