

**State of California
Office of Administrative Law**

In re:
Podiatric Medical Board of California

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections: 1399.659.1, 1399.659.2

Amend sections: 1399.659

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2021-0316-01

OAL Matter Type: Regular (S)

In this rulemaking action, the Board amends its regulations to establish substantial relationship criteria and rehabilitation criteria for crimes, professional misconduct, or acts considered substantially related to the qualifications, functions, or duties of a certificate holder. The regulatory changes align the regulations with Assembly Bill 2138 (Stats. 2018, Ch. 995).

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 8/25/2021.

Date: August 25, 2021



**Thanh Huynh
Senior Attorney**

For: **Kenneth J. Pogue
Director**

Original: Brian Naslund, Executive Officer
Copy: Kathleen Cooper

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 13.9. Podiatric Medical Board
of California

ORDER OF ADOPTION

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

Amend:

16 CCR § 1399.659

~~§ 1399.659. Suspension and Revocation of Certificates to Practice Podiatric Medicine.~~

Section 1399.659. Probation and Reinstatement of Suspended or Revoked Certificates.

Doctors of podiatric medicine whose certificates have been subject to disciplinary action shall be subject to the provisions of Article 3 of ~~Subchapter~~Chapter 2 of Chapter ~~Chapter~~Division 13 (commencing with Sections 1358-1360.2), except where those provisions are in conflict with or inconsistent with the provisions of this article.

Note: Authority cited: Section ~~24702018~~, Business and Professions Code.

Reference cited: Sections 481, 482, ~~2222~~, 2227, 2228, 2229 and 2307, Business and Professions Code.

Add:

Section 1399.659.1. Substantial Relationship Criteria.

- (a) For the purposes of denial, suspension, or revocation of a certificate pursuant to Section 141 or Division 1.5 (commencing with Section 475) or subdivision (e) of Section 2234 of the code, a crime, unprofessional conduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a person holding a certificate under Article 22 of Chapter 5 of Division 2 of the code if to a substantial degree it evidences present or potential unfitness of a person holding a certificate to perform the functions authorized by the certificate in a manner consistent with the public health, safety, or welfare.
- (b) In making the substantial relationship determination required under subsection (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;

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

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

(1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Articles 12, 22, and 25 of Chapter 5 of Division 2 of the code or other state or federal laws governing the practice of podiatric medicine.

Note: Authority cited: Sections 481, and 2470, Business and Professions Code.

Reference cited: Sections 141, 480, 481, 488, 490, 493, 2222, 2234, 2460.1, and 2486, Business and Professions Code.

Add:

Section 1399.659.2. Criteria for Rehabilitation.

(a) Denial of a license.

(1) When considering the denial of a certificate under Section 480 of the code on the ground that the applicant has been convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

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

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

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

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

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

(2) If the applicant has not completed the criminal sentence at issue without a violation of probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subsection (a)(1), the denial is based on unprofessional conduct, or the denial is based on one or more grounds specified in Sections 2221, 2222, 2236, 2237, 2239, 2479, 2486, 2488, or 2497 of the code, the board shall apply the following criteria in evaluating an applicant's rehabilitation:

(A) The nature and gravity of the act(s), unprofessional conduct, or crime(s) under consideration as grounds for denial.

(B) Evidence of any act(s), unprofessional conduct, or crime(s) committed subsequent to the act(s), unprofessional conduct, or crime(s) under consideration as grounds for denial.

(C) The time that has elapsed since commission of the act(s), unprofessional conduct, or crime(s) referred to in paragraph (A) or (B).

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

(E) The criteria in subsection (a)(1)(A) through (a)(1)(E), as applicable.

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

(b) Suspension or revocation of a certificate.

(1) When considering the suspension or revocation of a certificate under Section 490 of the code on the ground that a person holding a certificate under Article 22 of Chapter 5 of Division 2 of the code has been convicted of a crime, the board shall consider

whether the licensee made a showing of rehabilitation, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

- (A) The nature and gravity of the crime(s).
- (B) The length(s) of the applicable parole or probation period(s).
- (C) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (D) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (E) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(2) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the licensee did not make a showing of rehabilitation based on the criteria in subsection (b)(1), the suspension or revocation is based on a disciplinary action as described in Section 141 of the code, or the suspension or revocation is based on one or more of the grounds specified in Article 12, Chapter 5, Division 2 of the code and Section 2497 of the code, the board shall apply the following criteria in evaluating the licensee's rehabilitation:

- (A) Nature and gravity of the act(s), disciplinary action(s), or crime(s).
- (B) Total criminal record.
- (C) The time that has elapsed since commission of the act(s), disciplinary action(s), or crime(s).
- (D) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (E) If applicable, evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.
- (F) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate under the provisions of Section 2222 of the code, the board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in subsection (a) of this section.

Note: Authority cited: Sections 481, 482 and 2470, Business and Professions Code.

Reference: Sections 480, 481, 482, 488, 490, 493, 2221, 2222, 2227, 2229, 2236.1, 2237, 2239, 2307, 2460.1, 2479, 2486, 2488, 2497, and Article 12, Chapter 5, Division 2, Business and Professions Code.