

Title 16. Board of Vocational Nursing and Psychiatric Technicians

Order of Adoption

Amend sections 2521 and 2522 of Article 4 of Division 25 of Title 16 of the California Code of Regulations to read as follows:

§ 2521. Substantial Relationship Criteria.

- (a) For the purposes of denial, suspension, or revocation of a license pursuant to Section 141, Division 1.5 (commencing with Section 475), or Section 2878 of the Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his the license in a manner consistent with the public health, safety, or welfare. ~~Such crimes or acts shall include but not be limited to those involving the following:~~
- (b) In making the substantial relationship determination required under 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 a licensed vocational nurse.
- (c) For the purposes of subsection (a), a substantially related crime, professional misconduct or act shall include the following:
- (a1) Procuring a license by fraud, misrepresentation, or mistake.
 - (b2) A conviction of practicing medicine without a license in violation of Division 2, Chapter 5 of Division 2 (commencing with Section 2000) of the Business and Professions Code.
 - (c3) 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 Division 2, Chapter 6.5, Division 2 Article 1 (commencing with Section 2840) of the Business and Professions Code.
 - (d4) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Division 2, Chapter 5, Article 1312, Chapter 5, Division 2 (commencing with Section 2220) of the Business and Professions Code.
 - (e5) Conviction of a crime or act involving theft, fiscal dishonesty, fraud or deceit.
 - (f6) Any conviction for a crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.
 - (7) Conviction for a crime or act involving child, dependent adult, or elder abuse.

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(8) Conviction of sex offenses requiring a person to register as a sex offender pursuant to Section 290 of the Penal Code.

(9) Conviction for a crime or act involving assault, battery, or other violence including, but not limited to, those violations listed in subsection (d) of Penal Code Section 11160.

(10) Conviction for a crime or act involving lewd conduct or sexual misconduct as defined in Business and Professions Code Section 726.

(11) Conviction for a crime or act involving the use of drugs or alcohol to an extent or in a manner dangerous to the individual or the public.

(12) Conviction for a crime or act involving harassment, trespassing, or stalking.

(13) Failure to comply with any mandatory reporting requirements related to any of the forgoing convictions or the denial, suspension, or revocation of a license by the Board.

Note: Authority cited: Sections 481 and 2854, Business and Professions Code.

Reference: Sections 141, 475, 480, 481, 490, 493, 2875, 2876, 2878, 2878.5 and 2878.6, Business and Professions Code.

§ 2522. Rehabilitation Criteria.

(a) When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the grounds that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section ~~2878.7~~ 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria: shall consider whether the applicant or licensee made a showing of rehabilitation if the applicant or 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 applicant or licensee'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 the applicant or licensee has not completed the criminal sentence at issue without a violation of parole or probation, the Board determines that the applicant or licensee

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did not make a showing of rehabilitation based on the criteria in subsection (a), the denial is based on professional misconduct, or the denial is based on one or more of the grounds specified in Section 2878 of the Business and Professions Code, the Board shall apply the following criteria in evaluating an applicant or licensee's rehabilitation:

- (1) Nature and ~~severity~~gravity of the ~~act(s), offense(s), or crime(s), professional misconduct, or act(s)~~ under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the ~~act(s) or offense(s)~~ crime(s), professional misconduct, or act(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code ~~s~~Section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

Note: Authority cited: Sections 481, 482 and 2854, Business and Professions Code.
 Reference: Sections 475, 480, 481, 482, 488, 490, 492, 493, 2876, 2878 and 2878.7, Business and Professions Code.

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