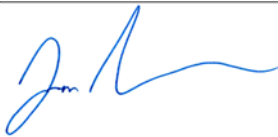


MEMORANDUM

DATE	July 20, 2018
TO	Board of Psychology
FROM	 Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #22(c)(2) – AB 2138 (Chiu and Low) Licensing Boards: Denial of Application: Criminal Conviction

Background:

This bill narrows a board's discretion to deny a professional license to the following cases:

- a) The applicant has been convicted of a crime; limits denials based on a criminal conviction to convictions for which the applicant is presently incarcerated or that occurred within the preceding seven years, except for convictions of a serious felony.
- b) The applicant has been subjected to formal discipline by a licensing board within the preceding seven years based on professional misconduct that would have been cause for discipline before the board for which the present application is made.

This bill removes the authority for a board to deny an application for licensure based on "acts" for which there has been no due process in a criminal or disciplinary proceeding.

This bill specifies that a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed.

This bill prohibits a board from denying a license on the basis of an arrest that resulted in a disposition other than a conviction.

This bill states that a board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

This bill requires that a board follow the following procedures in requesting or acting on an applicant's criminal history information:

- a) A board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history.

b) If a board decides to deny an application based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of the denial of the application as well as the applicant's right to challenge or appeal the board's decision, as well as the process by which the applicant may secure a copy of their own rap sheet.

This bill requires boards to retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant for a minimum of three years.

This bill requires boards to retain the following statistical information:

a) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

b) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

c) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

d) The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant.

This bill requires boards to annually make available to the public through the board's website and through a report submitted to the Legislature deidentified information collected that ensures confidentiality of the individual applicants.

This bill requires each board to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates, including the following:

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 in which the licensee is licensed.

This bill requires each board to post on its website a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates.

This bill requires a board to consider that an applicant or licensee has made a showing of rehabilitation if any of the following are met:

a) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.

c) The applicant or licensee has satisfied criteria for rehabilitation developed by the board.

This bill would require the Board of Psychology to promulgate regulations if it wishes to continue to use the option of granting a license and immediately issue a public reproof pursuant to Section 495, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension. This process would now be possible through broad other action language that would need to be clarified in regulations.

At the May 2018 Board Meeting, the Board voted to Oppose AB 2138 (Chiu and Low). Staff has attended all stakeholder meetings on the bill and sent letters of opposition and testified in opposition to the bill at the two subsequent Senate hearings on the bill.

Location: Senate Committee on Appropriations

Status: 06/13/2018 – Referred to Senate Committee on Appropriations.

Votes: 06/26/2018 – Senate Public Safety (4-2-1)
06/18/2018 – Senate Business Professions and Economic Development (6-3-0)
05/31/2018 – Assembly Floor (45-29-4)
05/25/2018 – Assembly Committee on Appropriations (12-4-1)
04/24/2018 – Assembly Committee on Business and Professions (11-5-0)

Action Requested:

No action is required at this time. Staff will continue to advocate in Opposition to AB 2138 (Chiu and Low).

Attachment A: Letter of Opposition to Senate Committee on Business Professions and Economic Development

Attachment B: AB 2138 (Chiu and Low) Text

June 19, 2018

The Honorable Nancy Skinner
Chair, Senate Committee on Public Safety
State Capitol, Room 2059
Sacramento CA 95814

RE: AB 2138 (Chiu and Low) – Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction

Dear Senator Skinner,

At its May 11, 2018 meeting, the Board of Psychology (Board) adopted an **OPPOSE** position on AB 2138 (Chiu and Low). This bill would make significant amendments to the Board's licensing and enforcement processes by limiting when a board can deny, revoke or suspend a license based on a conviction or other act.

To illustrate how this bill would affect the board, between January 2016 and May 2018 the Board denied 23 applications out of 6,294 which were received (a less than a one (1) percent denial rate). Those denials were made on the basis of criminal convictions or prior discipline. They include multiple individuals whose records raise serious concerns as to chemical dependency and who may require a period of supervised probation, individuals accused of sexual crimes with minors or others, or individuals who were disciplined in other states for sexual behavior with patients, and applicants whose criminal histories raise concerns over the potential for misrepresentation to, or financial abuse of, vulnerable mental health consumers. Of the 23 denials, the Board would lose authority to deny 16 of these applications (70 percent). The Board would only retain authority to deny 4 of the applications (17 percent), but due to the change in the law regarding which convictions/underlying acts the Board could consider, a denial would not be likely. The Board would retain full authority to deny three (3) applications (13 percent). Currently, out of those 23 denials, nine (9) (39%) are on probation, seven (7) (30%) are in the hearing process, four (4) (17%) requested a hearing and then withdrew their request, and three (3) (13%) did not request a hearing after their denial. Under current law, the Board already has an extremely low application denial rate due to a criminal conviction or prior discipline and an effective process for requesting a hearing to appeal a denial, making this bill is a solution in search of a problem.

Due to the bill's potential to diminish consumer protections integrated into the Board's licensing and enforcement processes and the bill's infringement on the Board's legislative mandate of consumer protection, the Board asks for your "No" vote when AB 2138 (Chiu and Low) is heard in the Senate Committee on Public. If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113. Thank you.

Sincerely,



STEPHEN C. PHILLIPS, JD, PsyD
President, Board of Psychology

cc: Assembly Member David S. Chiu
Assembly Member Evan Low
Members of the Senate Committee on Public Safety
Mary Kennedy, Chief Consultant, Senate Committee on Public Safety
Eric Csizmar, Consultant, Senate Republican Caucus


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AB-2138 Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction. (2017-2018)

SECTION 1. Section 7.5 of the Business and Professions Code is amended to read:

7.5. (a) A conviction within the meaning of this code means a *judgment following a* plea or verdict of guilty or a ~~conviction following a~~ plea of nolo ~~contendere.~~ *contendere or finding of guilt.* Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of ~~sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.~~ *sentence.* However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) *or (c)* of Section 480.

(b) (1) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(2) *The changes made to this section by the act adding this paragraph do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:*

(A) The State Athletic Commission.

(B) The Bureau for Private Postsecondary Education.

(c) Except as provided in subdivision (b), this section controls over and supersedes the definition of conviction contained within individual practice acts under this code.

SEC. 2. Section 480 of the Business and Professions Code is amended to read:

480. (a) ~~A~~ *Notwithstanding any other provision of this code, a* board may deny a license regulated by this code on the grounds that the applicant has ~~one of the following:~~ *been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:*

~~(1) Been-~~ *The applicant has been* convicted of a ~~crime.~~ *A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the-* *crime for which the applicant is presently incarcerated or for which the conviction occurred within the preceding seven years. However, the preceding seven-year limitation shall not apply to a conviction for a serious felony, as defined in the* Penal Code.

~~(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.~~

~~(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.~~

~~(B)~~ *The board may deny a license pursuant to this* ~~subdivision~~ *subparagraph* ~~only if the crime~~ *or act* ~~is~~ substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(2) The applicant has been subjected to formal discipline by a licensing board within the preceding five years based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that

disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license ~~solely~~ on the basis that he or she has been convicted of a ~~felony~~ *crime, or on the basis of acts underlying a conviction for a crime*, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal ~~Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of~~ *Code, has been granted clemency or a pardon by a state or federal executive, or has provided evidence of rehabilitation pursuant to* Section 482.

(c) Notwithstanding any other ~~provisions~~ *provision* of this code, a person shall not be denied a license ~~solely~~ on the basis of ~~a conviction~~ *any conviction, or on the basis of the acts underlying the conviction*, that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal ~~Code.~~ *Code, or a comparable dismissal or expungement.* An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, ~~1203.41,~~ *1203.41,* or ~~1203.41~~ *1203.42* of the Penal Code shall provide proof of the ~~dismissal~~ *dismissal if it is not reflected on the report furnished by the Department of Justice.*

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

~~(e)~~ *(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.*

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history.

(2) If a board decides to deny an application based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) The changes made to this section by the act adding this subdivision do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

SEC. 3. Section 481 of the Business and Professions Code is amended to read:

481. (a) Each board under ~~the provisions of~~ this code shall develop criteria to aid it, when considering the denial, ~~suspension~~ *suspension*, or revocation of a license, to determine whether a crime ~~or act~~ is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates 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.

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

(c) A board shall not deny a license based in whole or in part on a conviction without considering evidence of rehabilitation.

(d) Each board shall post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.

(e) The changes made to this section by the act adding this subdivision do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

~~SEC. 5.~~ **SEC. 4.** Section 482 of the Business and Professions Code is amended to read:

482. (a) Each board under ~~the provisions of~~ this code shall develop criteria to evaluate the rehabilitation of a person ~~when:~~ *when doing either of the following:*

~~(a)~~ *(1) Considering the denial of a license by the board under Section ~~480~~ or 480.*

~~(b)~~ *(2) Considering suspension or revocation of a license under Section 490.*

(b) Each board shall ~~take into account all competent evidence of rehabilitation furnished by the applicant or licensee.~~ consider that an applicant or licensee has made a showing of rehabilitation if either of the following are met:

(1) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.

(2) The applicant or licensee has satisfied criteria for rehabilitation developed by the board.

(c) The changes made to this section by the act adding this subdivision do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

~~SEC. 6.~~ **SEC. 5.** Section 488 of the Business and Professions Code is amended to read:

488. Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(a) Grant the license effective upon completion of all licensing requirements by the applicant.

~~(b) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.~~

~~(e)~~ (b) Deny the license.

~~(d)~~ (c) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(d) The changes made to this section by the act adding this subdivision do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

~~SEC. 9.~~ **SEC. 6.** Section 493 of the Business and Professions Code is amended to read:

493. (a) Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that ~~fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.~~ *fact.*

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(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.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

(c) As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

(d) The changes made to this section by the act adding this subdivision do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

~~SEC. 10.~~ **SEC. 7.** Section 11345.2 of the Business and Professions Code is amended to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. ~~Notwithstanding subdivision (c) of Section 480, if~~ *If* the individual's felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused,

denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.