

LEGISLATIVE ADVISORY: AB 2138 (Chiu) Chapter 995, Statutes of 2018 – Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction.

Operative Date of Legislation: July 1, 2020

Attention Board of Psychology (Board) stakeholders:

Assembly Bill AB 2138 (Chiu) was signed by Governor Edmund G. Brown on September 30, 2018, and will become operative July 1, 2020. This legislation amends various provisions of the Business and Professions Code relating to a board's ability to deny a license or take disciplinary action in relation to criminal convictions based on various factors related to the crime, and revises requirements related to the criteria of rehabilitation that boards must consider when evaluating the denial of an application, a petition for reinstatement, or a petition for early termination of probation.

SUMMARY OF CHANGES:

Applicants:

- This bill prohibits the Board from denying a application for licensure based on a conviction of a crime unless the conviction meets the following criteria:
 - The conviction is for a crime substantially related to the qualifications, functions, or duties of the practice of psychology and was within seven years from the date of application to the Board, regardless of whether the applicant was incarcerated for that crime, or the applicant is presently incarcerated or was released from incarceration within the preceding seven years from the date of application.
 - The seven-year limitation does not apply and the Board may deny the application if the applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code, or convicted of a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.
 - Note: The Board may not deny an application on the basis of a conviction if the applicant obtained a certificate of rehabilitation, had been granted clemency or a pardon by a state or federal executive, or the conviction has been dismissed pursuant to Sections 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, or a comparable dismissal or expungement.
- The Board may deny the application if the applicant was subjected to formal discipline by a licensing board in or outside of California within the last seven years from the date of application, the discipline was based on professional misconduct that would be cause for discipline before the Board, and the professional misconduct was substantially related to the qualifications, functions, or duties of the practice of psychology. Note: this would not apply to prior disciplinary action where the basis for disciplinary action was a conviction that

has been dismissed pursuant to Sections 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, or a comparable dismissal or expungement.

- This bill continues to allow the Board to deny an application for licensure if the applicant knowingly made false statements of fact in his or her application, but an applicant's failure to disclose a fact cannot be the sole basis for application denial.
- This bill prohibits the Board from denying an application for licensure based on an arrest that resulted in a disposition other than a conviction.
- This bill allows the Board to request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relationship or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information is not a factor in the Board's decision to grant or deny an application for licensure.
- This bill requires the Board to notify an applicant who is being denied licensure due to their conviction history of the following:
 - The denial or disqualification of licensure.
 - Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.
 - That the applicant has the right to appeal the board's decision.
 - 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.
- This bill defines a conviction as "a judgment following a plea or verdict of guilty or a plea of nolo 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".

All of the above changes to initial licensure applications and criminal conviction considerations will impact the Board's initial licensure review process and may cause delays in processing applications for individuals with prior criminal convictions after the operative date of the bill.

Applicants and Licensees:

- This bill requires boards to develop criteria and, in doing so, to use particular criteria (below) to define whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates. These substantial relationship criteria are used to determine whether a Board will deny, revoke, or discipline a license for conviction of a crime.

- The new criteria that a Board must include in its substantial relationship regulations are:
 - The nature and gravity of the offense.
 - The number of years elapsed since the date of the offense.
 - The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

The Board's current regulation that defines substantial relationship to the profession of psychology is Title 16 California Code of Regulations (CCR) section [1394](#).

- This bill requires boards to include new criteria (below) to their regulations regarding rehabilitation that are used to determine whether to deny, revoke, or discipline a license.
 - This bill requires the Board to add to its rehabilitation criteria the consideration of whether the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation.

The Board's current rehabilitation criteria for the purposes of license denial and reinstatement are in 16 CCR section [1395](#) and the current rehabilitation criteria for the purposes of license suspension or revocation are in 16 CCR section [1395.1](#).

Both of the above changes to the substantial relationship criteria and rehabilitation criteria may impact the Board's disciplinary processes and initial licensure application review and denial processes.

IMPLEMENTATION:

The Board is working with the Department of Consumer Affairs and other boards and bureaus regarding any necessary changes to regulations, forms, and the BreEZe licensing system regarding licensing applications and the Board's disciplinary processes by the operative date of this bill.