

**TITLE 16. STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for the proposed regulation.

Subject Matter of Proposed Regulation: Disciplinary Criteria

Sections Affected: California Code of Regulations (CCR), Title 16, sections 1936, 1936.1, 1936.2, 1937.1 and 1937.2

Background and Statement of Problem: The Structural Pest Control Board (SPCB) enforces the Structural Pest Control Act and licenses structural pest control professionals.

In accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), by July 1, 2020, BPC section 481 will require the SPCB to develop criteria, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions it regulates. Further, BPC section 493 will require the SPCB to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates by using criteria including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession. The substantial relationship requirement stems from the due process principle that a statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448; *Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.)

In addition, BPC section 482 will require the SPCB to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. In the context of professional licensing decisions, the courts have said that, “[r]ehabilitation . . . is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058, internal punctuation omitted.) Additionally, the Legislature’s “clear intent” in enacting AB 2138 was “to reduce licensing and employment barriers for people who are rehabilitated.” (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.)

CCR section 1937.1 establishes the criteria for determining when a crime is substantially related to the qualifications, functions and duties of a licensee. CCR section 1937.2 establishes the criteria for determining rehabilitation of an applicant or licensee when considering denial, suspension, or petition for reinstatement of a license on the ground of a criminal conviction.

At the SPCB’s April 17, 2019 meeting, this regulatory proposal was presented to the SPCB for its review and approval. The SPCB unanimously approved the proposed language and delegated authority to the executive officer to make any technical, non-substantive changes if necessary.

As required under AB 2138, the SPCB proposes to amend CCR, Title 16, sections 1937.1 and 1937.2 to adhere to these mandates and revise its criminal conviction substantial relationship and rehabilitation criteria.

Additionally, the SPCB's current license applications inquire about the applicant's criminal history. Pursuant to the requirements of AB 2138 this regulatory proposal will amend those applications by striking those questions.

SPECIFIC PURPOSE, ANTICIPATED BENEFIT, AND RATIONALE

Amend Section 1936 of Article 3 of Division 19 of Title 16 of the CCR (Operator Application 43L-1)

Purpose: The purpose of amending CCR section 1936 is to bring the SPCB's licensing applications into compliance with the provisions of AB 2138.

Anticipated Benefit: The proposed amendment to Form 43L-1 will bring it into compliance with AB-2138.

Rationale: Under AB-2138, BPC section 480(f)(2) states that a board shall not require an applicant to disclose any information or documentation regarding their criminal history. In this proposal, questions 15 and 16 on Form 43L-1 are stricken to comply with this provision.

Amend Section 1936 of Article 3 of Division 19 of Title 16 of the CCR (Field Representative Application 43L-14)

Purpose: The purpose of amending CCR section 1936 is to bring the SPCB's licensing applications into compliance with the provisions of AB 2138.

Anticipated Benefit: The proposed amendment to Form 43L-14 will bring it into compliance with AB-2138.

Rationale: Under AB-2138, BPC section 480(f)(2) states that a board shall not require an applicant to disclose any information or documentation regarding their criminal history. In this proposal, questions 16 and 17 on Form 43L-14 are stricken to comply with this provision.

Amend Section 1936.1 of Article 3 of Division 19 of Title 16 of the CCR (Company Registration Application 43L-26)

Purpose: The purpose of amending CCR section 1936.1 is to bring the SPCB's licensing applications into compliance with the provisions of AB 2138.

Anticipated Benefit: The proposed amendment to Form 43L-26 will bring it into compliance with AB-2138.

Rationale: Under AB-2138, BPC section 480(f)(2) states that a board shall not require an applicant to disclose any information or documentation regarding their criminal history. In this proposal, questions 16 and 17 on Form 43L-26 are stricken to comply with this provision.

Amend Section 1936.2 of Article 3 of Division 19 of Title 16 of the CCR (Applicator Application 43L-21)

Purpose: The purpose of amending CCR section 1936.2 is to bring the SPCB's licensing applications into compliance with the provisions of AB 2138.

Anticipated Benefit: The proposed amendment to Form 43L-21 will bring it into compliance with AB-2138.

Rationale: Under AB-2138, BPC section 480(f)(2) states that a board shall not require an applicant to disclose any information or documentation regarding their criminal history. In this proposal, questions 14 and 15 on Form 43L-21 are stricken to comply with this provision.

Amend Section 1937.1 of Article 3 of Division 19 of Title 16 of the CCR

Section 1937.1 (a)

Purpose: The purpose of amending CCR section 1937.1 (a) is to include professional misconduct, because section 480(a)(2) allows such misconduct that results in formal discipline in or outside California to be considered when deciding whether to deny a license.

Anticipated Benefit: This amendment would clarify for relevant parties (e.g., licensees, Board members and staff, and the Attorney General's Office) that the substantial relationship criteria must be used for cases when the Board is considering denying, suspending or revoking a license, as applicable, due to professional misconduct or due to disciplinary action based on prior discipline by another jurisdiction. The amendment would also consolidate into one place the criteria the Board applies anytime it evaluates the relationship between a crime or act and the practice of the profession, which will make the Board's decision-making more uniform and predictable.

Rationale: This amendment is necessary because section 480 now references substantially related professional misconduct as a potential reason for denying a license. Likewise, section 141 authorizes discipline for substantially related acts in out-of-state jurisdictions. It is important for the substantial relationship criteria in regulations to be updated to reflect the change in AB 2138, and to ensure clarity and consistency with statute.

The proposal is necessary to provide the appropriate notice to license applicants and licensees that discipline in an out-of-state jurisdiction, and professional misconduct are grounds for license denial, suspension, or revocation. It is also necessary to consolidate into one place the criteria the Board will apply in evaluating whether a crime or other misconduct is substantially related to the licensed profession.

Section 1937.1 (b)

Purpose: The purpose of amending CCR section 1937.1 subsection (b) is to implement AB 2138 and BPC section 481 which requires each board to develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions regulated by the boards.

Anticipated Benefit: The proposed amendments to section 1937.1, subsection (b) would provide clarity and transparency to license applicants and licensees by listing the specific criteria the SPCB must consider when making substantial relationship determinations applicable to criminal convictions. The proposal would also make relevant parties aware of any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) of the specific criteria used by the SPCB to determine whether a criminal conviction is substantially related to the practice of structural pest control.

Rationale: BPC section 480 presently authorizes the SPCB to deny an application for licensure based on a conviction for a crime or act substantially related to the licensed business or profession. (BPC, § 480, subd. (a)(3)(B).) Likewise, section 490 authorizes the SPCB to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession. (BPC, § 490, subd. (a).) BPC section 481 requires boards to develop criteria to help evaluate whether a crime was substantially related to the regulated business or profession, and the SPCB established the criteria via regulations.

The Legislature's clear intent in enacting AB 2138 was to reduce licensing and employment barriers for people who are rehabilitated. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.) Accordingly, in AB 2138, the Legislature amended BPC section 480 to limit the ability to use prior convictions or acts when denying licenses. Beginning July 1, 2020, boards may not deny a license to an applicant because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. (BPC, § 480, subds. (b) & (c), as added by AB 2138, § 4.)

Absent these circumstances, AB 2138 will permit boards to deny a license when an applicant has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession, and one of the following conditions exist:

- 1) The conviction occurred within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of a specified business or profession regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau;
- 2) The applicant is presently incarcerated for the crime; or

3) The applicant was released from incarceration for the crime within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of specified businesses or professions regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau.

AB 2138 also specified three criteria that boards must consider when evaluating whether a crime is “substantially related” to the regulated business or profession. The criteria “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[; and,] (3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.” (BPC, § 481, subd. (b), as added by AB 2138, § 7; see also BPC, § 493, subd. (b), as added by AB 2138, § 13.) Accordingly, the proposed regulation lists each of these criteria for the SPCB to consider when making the substantial relationship determination. This proposed addition is necessary to conform the regulation to statute, and to consolidate the SPCB’s substantial relationship criteria.

Section 1937.1 (c)

Proposed Change/Purpose: This amendment specifies that crimes, professional misconduct, or acts that are substantially related to the qualifications of a Board licensee include violations of the applicable Business and Professions Code provisions that govern the Board’s licensees.

Factual Basis/Rationale: The Legislature established the laws that govern each of the Board’s licensed professions, and a violation of the governing statutes is directly related to the profession. Thus, the violations identified in subdivision (c) of this section are relevant to the nature and duties of the practice of the profession of the Board’s license types. Violations of these provisions suggests a lack of fitness to practice structural pest control.

Anticipated Benefits: The proposed revisions to section 1937(c) would make it clear to applicants, licensees and other interested parties that direct violations of the statutes governing the practice of Board licensees and of BPC Division 3, Chapter 14, can be considered substantially related to the professions which the Board licenses, and examined as substantially related for purposes of denying or disciplining a license.

Amend Section 1937.2 of Article 3 of Division 19 of Title 16 of the CCR

Section 1937.2 (a)

Purpose: The purpose of amending CCR section 1937.2, subsection (a) is to comply with the requirements of AB 2138, section 9, and BPC section 482, subdivision (b)(1), which requires the SPCB to consider whether an applicant has made a showing of rehabilitation if the applicant has completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also provides a specific list of criteria for the SPCB to consider for these applicants. The list of criteria is narrow in scope and limited to

considerations relevant to the crime and the criminal sentence, since AB 2138 requires the SPCB to consider rehabilitation in the narrow context of an applicant who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under the Department of Consumer Affairs (DCA).

Anticipated Benefit: The proposed revisions to CCR section 1937.2, subsection (a) would provide transparency and clarity to license applicants who have completed their criminal sentence without a violation of parole or probation. Providing the narrow list of rehabilitation criteria would help license applicants understand the facts and documents to present to the SPCB to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, applicants who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria applicable to the applicant.

Rationale: Existing law required boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying or disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) A board may not deny an applicant a license based solely on a misdemeanor conviction, if the applicant met the applicable requirements of the criteria of rehabilitation that the board developed. (BPC, § 480, subd. (b).)

Operative July 1, 2020, BPC section 480 will prohibit the SPCB from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or on the basis of the facts underlying a conviction, if the applicant "made a showing of rehabilitation pursuant to Section 482." (BPC, § 480, subd. (b), as added by AB 2138, § 4.) In deciding whether to deny a license based on a conviction, the SPCB must consider evidence of the applicant's rehabilitation, pursuant to the process established in the Act, or its regulations, and as directed under BPC section 482. (BPC, § 481, subd. (c), as added by AB 2138, § 7; see also BPC, § 493, subd. (b)(2), as added by AB 2138, § 13 ["A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation"].)

To implement AB 2138, it is necessary for the SPCB to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to deny a license based on a criminal conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.) The SPCB must also decide whether an applicant "made a showing of rehabilitation," if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subd. (b), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the SPCB must consider when denying a license. The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the SPCB in evaluating rehabilitation. (16 CCR § 2041, subs. (a)(4).) But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: "The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily

prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the SPCB must now consider whether an applicant who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

The proposal specifies the following criteria for the SPCB to consider when making the determination that the applicant who has successfully completed the criminal sentence has made a showing of rehabilitation: (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; and (5) the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification. The criteria are necessary to assist the SPCB in evaluating rehabilitation. Since the purpose of evaluating an applicant’s rehabilitation is to determine whether the applicant is sufficiently reformed to be licensed, but AB 2138 requires the SPCB to evaluate rehabilitation in the narrow context of an applicant who completed the criminal sentence without violating parole or probation, each of these criteria are narrow in scope and would provide to the SPCB information specific to the applicant’s criminal sentence and terms or conditions of parole or probation, so that the SPCB knows the relevant criteria it must consider to make the determination as to the applicant’s rehabilitation. In addition, to provide uniformity with other DCA boards, the proposed criteria were adopted by the SPCB pursuant to DCA’s recommended rehabilitation criteria.

The SPCB must consider the nature and gravity of the crime, because this is the offense against which the applicant’s rehabilitative efforts will be evaluated. The SPCB will consider the length of the applicable parole or probation period, because the length of time that the applicant served probation or parole without a violation is relevant to whether the applicant is rehabilitated and will comply with licensure requirements in the future. (See *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [“a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice”].)

The SPCB must consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the applicant is sufficiently rehabilitated.

The SPCB must consider the terms or conditions of parole or probation and the extent to which they bear on the applicant’s rehabilitation, because the actual parole or probation terms can inform the SPCB on whether the applicant is rehabilitated. For instance, in cases where an applicant was convicted of a crime involving alcohol, probation terms requiring the applicant to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the applicant’s rehabilitation. (See *In re Billings* (1990) 50 Cal.3d 358, 368 [“An alcoholic’s rehabilitation is almost universally predicated on a choice to confront his or her

problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous”].)

The SPCB must consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification, because this may be relevant to the SPCB's determination. For instance, if correctional authorities removed terms of parole or probation due to the applicant's good behavior, this would bear on the SPCB's evaluation of the applicant's rehabilitation and willingness to conform to the rules of licensure.

Amend Section 1937.2 (b)

Purpose: The purpose of amending CCR section 1937, subsection (b) is to comply with the requirements of AB 2138, section 9, and BPC section 482, subdivision (b)(2), which requires the Board to consider whether an applicant has made a showing of rehabilitation if: (1) the applicant has not completed the criminal sentence at issue without a violation of parole or probation; (2) the SPCB does not find that the applicant made a sufficient showing of rehabilitation based on the narrow criteria in subsection (a); or, (3) the denial is based on something other than a crime, such as professional misconduct. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also provides a specific, more comprehensive, list of criteria for the SPCB to consider for these applicants, which is not limited to the applicable parole or probation. The list of criteria incorporates the criteria from subsection (a) for applicants convicted of a crime, so that similarly-situated applicants have the opportunity to be evaluated by the SPCB under the same set of criteria. The list of criteria also anticipates that the SPCB may be considering “act(s)” that are the basis for the denial, since the SPCB may be evaluating the rehabilitation of an applicant where the ground for denial involves acts of professional misconduct, rather than a conviction. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under DCA.

Anticipated Benefit: The proposed revisions to CCR section 1937.2, subsection (b) would provide transparency and clarity to license applicants who have not completed their criminal sentence without a violation of parole or probation or otherwise do not qualify for consideration under subsection (a). Providing the list of rehabilitation criteria would help license applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, applicants who do not qualify for consideration under subsection (a), by listing rehabilitation criteria applicable to the applicant.

Rationale: Existing law required boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying a license based on a conviction, acts of dishonesty, fraud, or deceit, or acts that would be grounds for discipline, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) A board may not deny an applicant a license based solely on a misdemeanor conviction, if the applicant met the applicable requirements of the criteria of rehabilitation that the board developed. (BPC, § 480, subd. (b).)

Operative July 1, 2020, BPC section 480 will prohibit the SPCB from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or on the basis of the facts underlying a conviction, if the applicant “made a showing of rehabilitation pursuant to Section 482.” (BPC, § 480, subd. (b), as added by AB 2138, § 4.) In deciding whether to deny a license based on a conviction, the SPCB must consider evidence of the applicant’s rehabilitation, pursuant to the process established in the Act, or its regulations, and as directed under BPC section 482. (BPC, § 481, subd. (c), as added by AB 2138, § 7; see also BPC, § 493, subd. (b)(2), as added by AB 2138, § 13 [“A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation”].)

To implement AB 2138, it is necessary for the SPCB to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to deny a license based on a conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.) The SPCB must also decide whether an applicant or licensee “made a showing of rehabilitation,” if the applicant did not complete the criminal sentence at issue without a violation of parole or probation, or the board finds, in applying its rehabilitation criteria, that the applicant is rehabilitated. (BPC, § 482, subd. (b), as added by AB 2138, § 9.) AB 2138 also authorized the Board to deny a license based on prior disciplinary misconduct. Accordingly, it is necessary to amend the regulation to account for denials on this ground.

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the SPCB must consider when denying a license. The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Board in evaluating rehabilitation. (16 CCR, § 2041, subs. (a)(4).) But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the SPCB must now consider whether an applicant who has complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria. If, however, the applicant did not comply with the terms of parole or probation, the SPCB would apply its standard rehabilitation criteria, as modified in this proposal.

The proposal uses the existing rehabilitation criteria with the addition of the criteria specified in CCR section 1937.2, subsection (a) and makes other minor revisions. Each of these criteria are designed to focus the SPCB’s evaluation on facts and circumstances relevant to an applicant’s rehabilitation, so that the SPCB knows the relevant criteria it must review to make the determination as to the applicant’s rehabilitation. In addition, to provide uniformity with other DCA

boards, the proposed criteria were adopted by the SPCB pursuant to DCA's recommended rehabilitation criteria.

The SPCB will consider the nature and gravity of the crime or act for the same reasons as discussed for subsection (a). This is the offense or misconduct against which the SPCB will judge the applicant's rehabilitation. This is also already an existing regulatory criterion.

The SPCB will also consider evidence of acts or crimes committed after the act or crime that is the basis for denial. Such acts or crimes typically reflect additional misconduct by the applicant and bear on the SPCB's decision regarding whether the applicant is sufficiently rehabilitated to be licensed and conform to the requirements of licensure. This is also already an existing regulatory criterion.

The SPCB would consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person's rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation. This criterion has not changed substantively from existing regulation.

The SPCB will consider whether the applicant complied with parole, probation, restitution or other sanctions imposed on the applicant. This criterion is otherwise unchanged from existing regulation. The information embraced in this criterion bears on an applicant's rehabilitation in terms of the applicant's willingness to make amends from prior misconduct and willingness to conform to the rules of licensure. Accordingly, it is necessary for the SPCB to consider these elements to evaluate an applicant's reformation from prior misconduct.

The SPCB will also consider the criteria in subsection (a). This is necessary to ensure that all applicants convicted of a crime have the opportunity to be evaluated under the same set of rehabilitation criteria. For applicants that completed their criminal parole or probation without a violation, the SPCB would first evaluate their eligibility for licensure under the criteria in subsection (a). If the applicant did not demonstrate sufficient rehabilitation under the criteria in subsection (a), the SPCB would apply the broader criteria in subsection (b). For applicants that did not complete their criminal parole or probation without a violation, the SPCB would apply the criteria in subsection (b), which incorporates the criteria from subsection (a). This way, similarly situated applicants (those being considered for denial based on a conviction) have the benefit of the same set of criteria.

The SPCB would consider rehabilitation evidence the applicant submitted. There was not change to this criterion, and the SPCB is required to consider such evidence under BPC section 481(c). It is necessary to retain this requirement in order to consolidate the SPCB's rehabilitation criteria in one place.

Amend Section 1937.2 (c)

Purpose: The purpose of amending CCR section 1937.2, subsection (c) is to comply with the requirements of AB 2138, section 9, and BPC section 482, subdivision (b)(1), which requires the

SPCB to consider whether a licensee has made a showing of rehabilitation if the licensee has completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also seeks to provide a specific list of criteria for the SPCB to consider for these licensees. For uniformity purposes, the proposal follows the same approach as subsection (a). The list of criteria is narrow in scope and limited to considerations relevant to the crime and the criminal sentence, since AB 2138 requires the SPCB to consider rehabilitation in the narrow context of an applicant who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the disciplinary process and uniformity of rehabilitation criteria with other boards under DCA.

Anticipated Benefit: The proposed revisions to CCR section 1937.2, subsection (c) are intended to provide transparency and clarity to licensees who have completed their criminal sentence without a violation of parole or probation. Providing the narrow list of rehabilitation criteria would help licensees understand the facts and documents to present to the SPCB to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, licensees who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria applicable to the licensee.

Rationale: Existing law required boards to develop criteria to evaluate the rehabilitation of a licensee when considering disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) To implement AB 2138 and maintain consistency in how the SPCB evaluates rehabilitation evidence between license denials and discipline, it is necessary for the SPCB to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to suspend or revoke a license based on a conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the SPCB must consider when suspending or revoking a license. It requires the SPCB to decide whether an applicant or licensee “made a showing of rehabilitation” in two circumstances: (1) the licensee completed the applicable criminal sentence without a violation of parole or probation, or (2) the board finds, after applying its rehabilitation criteria, that the applicant is rehabilitated. (BPC, § 482, as added by AB 2138, § 9.)

The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the SPCB in evaluating rehabilitation. (16 CCR § 2041, subs. (b)(4).) But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required

to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the SPCB must now consider whether a licensee who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

The proposal specifies the following criteria for the SPCB to consider when making the determination that the licensee who has successfully completed the criminal sentence has made a showing of rehabilitation: (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; and (5) the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification. The criteria are necessary to assist the SPCB in evaluating rehabilitation. Since the purpose of evaluating a licensee’s rehabilitation is to determine whether the licensee is sufficiently reformed to be licensed, but AB 2138 requires the SPCB to evaluate rehabilitation in the narrow context of a licensee who completed the criminal sentence without violating parole or probation, each of these criteria are narrow in scope and would provide to the SPCB information specific to the licensee’s criminal sentence and terms or conditions of parole or probation, so that the SPCB knows the relevant criteria it must consider to make the determination as to the licensee’s rehabilitation. In addition, to provide consistency with how the SPCB considers rehabilitation criteria, and uniformity with other DCA boards, the proposed criteria was adopted by the SPCB pursuant to DCA’s recommended rehabilitation criteria.

The SPCB must consider the nature and gravity of the crime, because this is the offense against which the licensee’s rehabilitative efforts will be evaluated. The SPCB will consider the length of the applicable parole or probation period, because the length of time that the licensee served probation or parole without a violation is relevant to whether the licensee is rehabilitated and will comply with licensure requirements in the future. (See *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [“a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice”].)

The SPCB must consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the licensee is sufficiently rehabilitated.

The SPCB must consider the terms or conditions of parole or probation and the extent to which they bear on the licensee’s rehabilitation, because the actual parole or probation terms can inform the SPCB on whether the licensee is rehabilitated. For instance, in cases where a licensee was convicted of a crime involving alcohol, probation terms requiring the licensee to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the licensee’s rehabilitation. (See *In re Billings* (1990) 50 Cal.3d 358, 368 [“An alcoholic’s rehabilitation is almost universally predicated on a choice to confront his or her problem, followed

by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous”].)

The SPCB must consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification, because this may be relevant to the SPCB’s determination. For instance, if correctional authorities removed terms of parole or probation due to the licensee’s good behavior, this would bear on the SPCB’s evaluation of the licensee’s rehabilitation and willingness to conform to the rules of licensure.

Amend Section 1937.2 (d)

Purpose: The purpose of amending CCR section 1937.2, subsection (d) is to conform to changes the SPCB proposes to implement AB 2138, section 9, and BPC section 482, subdivision (b)(2), which require the SPCB to consider whether an applicant has made a showing of rehabilitation if: (1) the applicant has not completed the criminal sentence at issue without a violation of parole or probation; (2) the SPCB does not find that the applicant made a sufficient showing of rehabilitation based on a narrow set of criteria; or, (3) the SPCB’s decision is based on something other than a crime. Likewise here, the SPCB would consider the rehabilitation criteria in subsection (d) if: (1) a licensee has not completed the criminal sentence at issue without a violation of parole or probation; (2) the SPCB does not find that the licensee made a sufficient showing of rehabilitation based on the narrow criteria in subsection (c); or, (3) the SPCB’s decision is based on something other than a crime, such as out-of-state discipline under BPC section 141.

As AB 2138 does not prescribe new rehabilitation criteria, the proposal also seeks to provide a specific, more comprehensive, list of criteria for the SPCB to consider for these licensees, which is not limited to the person’s parole or probation. The list of criteria is mostly unchanged from existing regulation, and it anticipates that the SPCB may be considering “act(s)” that are the basis for discipline, since the SPCB may, for instance, be evaluating the rehabilitation of a licensee where the ground for discipline involves disciplinary acts in other states. The list of criteria incorporates the criteria from subsection (c) for licensees convicted of a crime, so that similarly-situated licensees have the opportunity to be evaluated by the SPCB under the same set of criteria. This proposal is also intended to provide predictability and consistency in the licensing and disciplinary process, and uniformity of rehabilitation criteria with other boards under DCA. Thus, the proposal follows the same approach as subsection (b).

Anticipated Benefit: The proposed revisions to CCR section 1937.2, subsection (d) would provide transparency and clarity to licensees who have not completed their criminal sentence without a violation of parole or probation, or otherwise do not qualify for consideration under subsection (c). Providing the list of rehabilitation criteria would help licensees understand the facts and documents to present to the SPCB to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal (e.g., the Deputy Attorney General, the Administrative Law Judge, and the licensee’s counsel) in advocating for or against, or deciding upon, licensees who do not qualify for consideration under subsection (c), by listing rehabilitation criteria applicable to the licensee.

Rationale: Existing law required boards to develop criteria to evaluate the rehabilitation of a licensee when considering disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) To implement AB 2138 and maintain consistency in how the SPCB evaluates rehabilitation between license denials and discipline, it is necessary for the SPCB to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to suspend or revoke a license based on a conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the SPCB must consider when suspending or revoking a license. It requires the SPCB to decide whether an applicant or licensee “made a showing of rehabilitation” in two circumstances: (1) the licensee completed the applicable criminal sentence without a violation of parole or probation, or (2) the board finds, after applying its rehabilitation criteria, that an applicant is rehabilitated. (BPC, § 482, as added by AB 2138, § 9.)

The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the SPCB in evaluating rehabilitation. (16 CCR § 2041, subs. (b)(4).) But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the SPCB must now consider whether an applicant who has complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria. If, however, the applicant did not comply with the terms of parole or probation, the SPCB would apply its standard rehabilitation criteria, as modified in this proposal.

The proposal uses the existing rehabilitation criteria with the addition of the criteria specified in CCR section 1937.2, subsection (c) and makes other minor revisions. Each of these criteria are designed to focus the SPCB’s evaluation on facts and circumstances relevant to a licensee’s rehabilitation, so that the SPCB knows the relevant criteria it must review to make the determination as to the licensee’s rehabilitation. In addition, to provide uniformity with other DCA boards, the proposed criteria were adopted by the SPCB pursuant to DCA’s recommended rehabilitation criteria.

The SPCB will consider the nature and severity of the crime or act for the same reasons as discussed for subsections (b) and (c). This is the offense or misconduct against which the SPCB will judge the licensee’s rehabilitation. This is also already an existing regulatory criterion.

The SPCB will also consider evidence of the licensee's total criminal record. This is an existing regulatory criterion. It is necessary for the SPCB to consider the licensee's total criminal record because additional prior or subsequent misconduct by the licensee is relevant to the SPCB's decision regarding whether the licensee is sufficiently rehabilitated to be licensed and the licensee's willingness to conform to the requirements of licensure.

The SPCB would consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person's rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation. This criterion has not changed substantively from existing regulation.

The SPCB will consider whether the licensee complied with parole, probation, restitution or other sanctions imposed on the licensee. This is an existing regulatory criterion. The information embraced in this criterion bears on a licensee's rehabilitation in terms of the licensee's willingness to make amends from prior misconduct and to conform to the rules of licensure. Accordingly, it is necessary for the SPCB to consider these elements to evaluate a licensee's reformation from prior misconduct.

The SPCB will also consider the criteria in subsection (c). This is necessary to ensure that all licensees convicted of a crime have the opportunity to be evaluated under the same set of rehabilitation criteria. For licensees that completed their criminal parole or probation without a violation, the SPCB would first evaluate their eligibility for licensure under the criteria in subsection (c). If the licensee did not demonstrate sufficient rehabilitation under the criteria in subsection (c), the SPCB would apply the broader criteria in subsection (d). For licensees that did not complete their criminal parole or probation without a violation, the SPCB would apply the criteria in subsection (d), which incorporates the criteria from subsection (c). This way, similarly-situated licensees (those being considered for discipline based on a conviction) have the benefit of the same set of criteria.

The SPCB would consider evidence that a licensee's conviction was dismissed pursuant to Penal Code section 1203.4. This is an existing regulatory requirement, and it is necessary to consider dismissal proceedings because they are relevant to the SPCB's evaluation of whether a licensee is rehabilitated. The word "expungement" would be amended to "dismissal," but this is not a substantive change. Dismissal is simply a more accurate description of the proceedings conducted under Penal Code section 1203.4. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1129, fn.5.)

The SPCB would consider rehabilitation evidence the licensee submitted. This is an existing regulatory criterion. It is necessary to retain this requirement in order to maintain consistency between the SPCB's evaluation of rehabilitation in the licensing and discipline context.

UNDERLYING DATA

April 17, 2019 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes

BUSINESS IMPACT

The SPCB has determined that the proposed regulation will not have a significant adverse economic impact on businesses. The SPCB made this determination because the proposed regulation does not directly affect businesses. This initial determination is based on the stated purpose of AB 2138 which sought to reduce barriers to licensure for applicants and licensees with criminal histories or licensure discipline. The SPCB anticipates that the proposed regulation will impact businesses to the extent that individual applicants or licensees are more likely able to be licensed, or retain licensure, under this proposal. The SPCB does not know how many applicants will gain or retain licensure but does not anticipate the number to significantly impact businesses.

ECONOMIC IMPACT ASSESSMENT

This regulatory proposal will have the following effects:

- ➔ It will not create or eliminate jobs within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- ➔ It will not create new businesses or eliminate existing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- ➔ It will not affect the expansion of businesses currently doing business within the State of California because the regulations are aimed at reducing barriers to licensure and making it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- ➔ This regulatory proposal benefits the health and welfare of California residents because it has the potential to increase the pool of licensed, qualified pest management professionals in the state.
- ➔ This regulatory proposal does not affect worker safety because it establishes criteria, based upon recent statutory mandates, for licensure following the applicant's or licensee's criminal conviction. It does not involve worker safety.
- ➔ This regulatory proposal does not affect the state's environment because it only pertains to licensure applicants and existing licensees and their qualifications following a criminal conviction or disciplinary action. It does not involve environmental issues.

MANDATE FOR SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulatory proposal does not include any mandates for the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the regulation is proposed or would be as effective or less burdensome to affected private persons than the proposed regulation, or equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

- Option 1: To pursue a regulatory change that requires the SPCB to find rehabilitation if the applicant or licensee completed the terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the SPCB believes that reviewing each individual on the basis of multiple criteria is the better indicator whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the SPCB rejected this option.
- Option 2: Do nothing, meaning the SPCB would not adopt the regulations. The SPCB opted not to pursue this option because per AB 2138, the SPCB is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815.