

CALIFORNIA ARCHITECTS BOARD

INITIAL STATEMENT OF REASONS

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

Subject Matter of Proposed Regulations: Criminal Conviction Substantial Relationship and Rehabilitation Criteria

Sections Affected: 110 and 110.1 of Article 2 of Division 2 of Title 16 of the California Code of Regulations (CCR)

Background and Statement of the Problem

Statutory authority: The California Architects Board (Board) licenses architects. Business and Professions Code (BPC) section 5526 requires the Board to adopt rules and regulations governing the examination of applicants for licenses to practice architecture in this state and authorizes the Board to adopt other rules and regulations as may be necessary and proper.

In accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), beginning July 1, 2020, BPC sections 481 and 493 will require the Board, when considering the denial, suspension, or revocation of a license based on a crime, to determine whether the crime is substantially related to the qualifications, functions, or duties of an architect by using specified 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 an architect. (BPC, § 481, subd. (b), as added by AB 2138, § 7; BPC, § 493, subd. (b), as added by AB 2138, § 13.) 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 the individual's 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, 1137-1138.)

Rehabilitation criteria: In addition, BPC section 482 requires the Board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license pursuant to BPC section 480 or 490. Beginning July 1, 2020, BPC section 482 will require the Board, when considering the denial, suspension, or revocation of a license based on a crime, professional misconduct, or act pursuant to BPC section 480 or 490, to consider whether the applicant or licensee is rehabilitated based on either: (1) having completed their criminal sentence without violating parole or probation; or (2) the Board's standard criteria for evaluating rehabilitation. (BPC, § 482, as added by AB 2138, § 9.) 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.)

Existing regulations: CCR section 110 establishes the criteria for determining when a crime or act is substantially related to the qualifications, functions and duties of an architect. CCR section 110.1 establishes the criteria for determining rehabilitation of an applicant or licensee when considering denial, suspension, or revocation of a license based on a crime or act, or whether to grant a petition for reinstatement of a license.

Background: At the Board’s June 13, 2018 meeting, the Board discussed proposed legislation regarding AB 2138 and the intent of the bill to reduce barriers to licensure for individuals with prior criminal convictions. (See Underlying Data, June 13, 2018 Board Meeting Agenda, Meeting Materials, and Meeting Minutes, p. 5.) The Board decided to take no position on the bill at that time. At the September 12, 2018 meeting (See Underlying Data, September 12, 2018 Board Meeting Agenda, Meeting Materials, and Meeting Minutes, p. 4.), the Board was informed the bill was on the Governor’s desk for signature, and at its December 13-14, 2018 meeting, the Board was informed that staff was working with the Department of Consumer Affairs to develop a regulatory proposal implementing AB 2138. (See Underlying Data, December 13-14, 2018 Meeting Minutes pp. 2, 6.)

At the Board’s February 27, 2019 meeting, this regulatory proposal was presented to the Board for its review and approval. (See Underlying Data, February 27, 2019 Meeting Agenda, Meeting Materials, and Meeting Minutes.) The Board approved the proposed language and delegated authority to the executive officer to make any technical, non-substantive changes if necessary.

Problem statement: In order to comply with the mandates of AB 2138, the Board proposes to amend sections 110 and 110.1 of article 2 of division 2 of title 16 of the CCR to adhere to these mandates and revise its substantial relationship and rehabilitation criteria.

Specific Purpose, Anticipated Benefit, and Rationale:

Amend CCR Section 110 – Substantial Relationship Criteria

Section 110, subsection (a)

Purpose: CCR section 110 establishes the criteria for determining whether a crime or act is substantially related to the qualifications, functions, and duties of an architect and therefore grounds for denial, suspension, or revocation of a license pursuant to BPC sections 480 and 490. The purpose of amending CCR section 110, subsection (a) is to expand the regulation to also require the Board to apply these criteria in its evaluation of whether a disciplinary action taken under non-California law is grounds for disciplinary action by the Board pursuant to BPC section 141, because the substantially related acts that are the basis for discipline under non-California law may be used to discipline a licensee pursuant to BPC section 141. This subsection would also be amended to require the Board to apply these criteria in its evaluation of “professional misconduct,” because, beginning July 1, 2020, the Board will be expressly authorized to deny licenses based on such misconduct under BPC section 480. (BPC, § 480, subd. (a)(2), as added by AB 2138, § 4.) The subsection would be amended to reword and move to subsection (c) the phrase, “[s]uch crimes or acts shall include, but not be limited to, those involving the following.”

Anticipated Benefits: The proposed revisions to CCR section 110, subsection (a) would provide clarity to applicants and licensees that the Board will apply the substantial relationship criteria in that section in its proceedings to deny, suspend, or revoke a license, as applicable, on the basis of professional misconduct pursuant to BPC section 480, as added by section 4 of AB 2138, or a disciplinary action taken under non-California law pursuant to BPC section 141. The proposal would also make aware relevant parties to any administrative appeal arising from a licensing decision (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent’s counsel) that when disciplining applicants or licensees for a criminal conviction, the Board is required to determine whether the act is substantially related to the practice of architecture using the listed criteria.

Rationale: BPC section 141 authorizes the Board to discipline a licensee on the basis of a disciplinary action taken under non-California law for a substantially related act. Beginning July 1, 2020, BPC section 480 will authorize the Board to deny a license application on the basis of substantially related professional misconduct that results in formal discipline by a licensing board in or outside of California. (BPC, § 480, subd. (a)(2), as added by AB 2138, § 4.) The regulation seeks to implement, interpret, and make specific BPC sections 141 and 480 by adding their relative provisions to the Board’s substantial relationship criteria regulation. Accordingly, the proposal is necessary to provide the appropriate notice to applicants and licensees that the

substantial relationship criteria in CCR section 110 apply to determinations of whether disciplinary action taken under non-California law, or professional misconduct, are grounds for license denial, suspension, or revocation, and to implement the requirements of BPC sections 141 and 480. The proposal is also necessary to consolidate into one regulation the criteria the Board will apply in evaluating whether a crime or other misconduct is substantially related to the qualifications, functions, and duties of an architect.

Section 110, subsection (b)

Purpose: The purpose of adding CCR section 110, subsection (b) is to implement AB 2138, adding BPC sections 481 and 493, which, beginning July 1, 2020, will require each board, when considering the denial, suspension, or revocation of a license based on a crime, to determine whether the crime is substantially related to the qualifications, functions, or duties of the professions regulated by that board by using specified criteria. (BPC, § 481, subd. (b), as added by AB 2138, § 7; BPC, § 493, subd. (b), as added by AB 2138, § 13.) Those criteria are as follows: (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. (*Id.*)

Anticipated Benefits: The proposed revisions to CCR section 110, subsection (b) would provide clarity and transparency to applicants and licensees by listing the specific criteria the Board must consider when making the substantial relationship determinations applicable to criminal convictions. The proposal would also make relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) aware of the specific criteria used by the Board to determine whether a criminal conviction is substantially related to the qualifications, functions, and duties of an architect.

Rationale: BPC section 480 presently authorizes the Board to deny an application for licensure based on a crime or act that is substantially related to the qualifications, functions, or duties of an architect. (BPC, § 480, subd. (a)(3)(B).) Likewise, BPC section 490 authorizes the Board 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 an architect. (BPC, § 490, subd. (a).) BPC section 481 requires the Board to develop criteria to help evaluate whether a crime or act was substantially related to the qualifications, functions, or duties of an architect when considering the denial, suspension, or revocation of a license. (Beginning July 1, 2020, BPC section 481 will only require the Board to develop substantial relationship criteria regarding a crime, not a "crime or act." (BPC § 481, subd. (a), as added by AB 2138, § 7.)) The Board 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 boards' ability to use prior criminal 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 Board to consider when making the substantial relationship determination regarding a crime. This proposed addition is necessary to conform the regulation to statute, and to consolidate the Board's substantial relationship criteria in one place.

Section 110, subsection (c)

Purpose: The purpose of amending CCR section 110, subsection (c) is to clarify that crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of an architect include, but are not limited to, any violation of other state laws (including laws of other states) or federal laws governing the practice of architecture. The proposal also makes make minor technical revisions to this subsection to accommodate the revisions made to subsection (a).

Anticipated Benefits: The proposed revisions to CCR section 110, subsection (c) would provide clarity to applicants and licensees of the specific crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a Board licensee. The proposal would also make aware relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) that substantially related crimes, professional misconduct, and acts include violations of other state or federal laws governing the practice of architecture.

Rationale: The current regulation provides that crimes or acts that are substantially related to the qualifications, functions, and duties of an architect include any violation of the Architects Practice Act (chapter 3 (commencing with section 5500) of division 3 of the BPC). The proposal would revise this provision to incorporate violations of other state laws (including laws of other states) and federal laws, consistent with authorities including the following: (1) the Board's existing authority to deny, suspend, or revoke a license on the basis of a criminal conviction or disciplinary action taken by any public agency, including agencies of other states, under BPC sections 5577 and 5586; and (2) the Board's existing authority under BPC sections 141 and 480, subdivision (b) to deny, suspend, or revoke a license, as applicable, on the ground of a disciplinary action taken under non-California law or professional misconduct. By incorporating those violations, the proposal would provide for consistency between license denial, suspension, or revocation proceedings based on violations of the Architects Practice Act and license denial, suspension, or revocation proceedings based on violations of other state laws (including laws of other states) or federal laws governing the practice of architecture.

Section CCR section 110.1 – Criteria for Rehabilitation

Section 110.1, subsection (a)

Purpose: The purpose of amending CCR section 110.1, subsection (a) is to comply with the requirements of AB 2138, section 9, adding BPC section 482, subdivisions (a)(1) and (b)(1), which, beginning July 1, 2020, will require the Board, when considering the denial of a license based on a crime pursuant to BPC section 480, to consider whether the applicant has made a showing of rehabilitation based on their having completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating an applicant in this category, the proposal also provides a special list of criteria for the Board 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 Board to consider rehabilitation in the narrow context of an applicant with a criminal conviction 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 Benefits: The proposed revisions to CCR section 110.1, subsection (a) would provide transparency and clarity to applicants with a criminal conviction who have completed their criminal sentence without a violation of parole or probation. Providing the special list of rehabilitation criteria would help those applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation in denial proceedings. 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 the special rehabilitation criteria applicable to those applicants.

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

Operative July 1, 2020, BPC section 480 will prohibit the Board 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 criminal 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 criminal conviction, the Board 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 Board to revise its regulations that establish criteria for evaluating rehabilitation when deciding whether to deny a license based on a criminal conviction. (BPC, § 482, subds. (a)(1) & (b), as added by AB 2138, § 9.) In particular, relevant to the proposed revisions to CCR section 110.1, subsection (a), the Board must decide whether an applicant with a criminal conviction "made a showing of rehabilitation" based on their having completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subds. (a)(1) & (b)(1), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating an applicant in this category. 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 § 110.1, 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 Board 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.

Accordingly, the proposal specifies the following special criteria for the Board to consider when making the determination that the applicant with a criminal conviction who has successfully completed the criminal sentence without a violation of parole or probation 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 Board in evaluating rehabilitation. Because BPC section 482, subdivisions (a)(1) and (b)(1) will require the Board to evaluate rehabilitation in the narrow context of an applicant with a criminal conviction who completed the criminal sentence without violating parole or probation, each of these criteria are narrow in scope and would provide to the Board information specific to the applicant's criminal sentence and terms or conditions of parole or probation so that the Board 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 Board pursuant to DCA's recommended rehabilitation criteria.

The rationale for each criterion is as follows:

Nature and gravity of the crime: The Board 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 Board 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"].)

Modification of probation period: The Board 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.

Terms or conditions of parole or probation: The Board 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 Board 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"].)

Modification of terms and conditions: The Board 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 Board'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 Board's evaluation of the applicant's rehabilitation and willingness to conform to the rules of licensure.

Section 110.1, subsection (b)

Purpose: The purpose of amending CCR section 110.1, subsection (b) is to comply with the requirements of AB 2138, section 9, adding BPC section 482, subdivisions (a)(1) and (b)(2), which, beginning July 1, 2020, will require the Board, when considering the denial of a license based on a crime, professional misconduct, or act pursuant to BPC section 480, to consider whether the 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 Board does not find that the applicant made a sufficient showing of rehabilitation based on the special criteria in CCR section 110.1, subsection (a), discussed above; or (3) the application is subject to denial on a basis other than a crime, such as professional misconduct. (BPC, § 482, subds. (a)(1) & (b)(2), as added by AB 2138, § 9.)

As AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating an applicant pursuant to BPC section 482, subdivisions (a)(1) and (b)(2), the proposal also provides a specific, more comprehensive list of standard rehabilitation criteria for the Board to consider for these applicants, which is not limited to the applicable parole or probation. The list of criteria incorporates the special criteria from CCR section 110.1, subsection (a), discussed above, so that similarly-situated applicants have the opportunity to be evaluated by the Board under the same set of criteria. The revised list of standard rehabilitation criteria also anticipates that the Board may be considering "act(s)" that are the basis for the denial, since the Board may be evaluating the rehabilitation of an applicant where the ground for denial involves professional misconduct or another act rather than a criminal conviction. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under DCA.

Anticipated Benefits: The proposed revisions to CCR section 110.1, subsection (b) would provide transparency and clarity to applicants: (1) who have not completed their criminal sentence without a violation of parole or probation; (2) who have not made a sufficient showing of rehabilitation based on the special criteria in CCR section 110.1, subsection (a), discussed above; or (3) whose application is subject to denial on a basis other than a crime. Providing the revised list of standard rehabilitation criteria would help those applicants understand the facts and documents to present to the Board to demonstrate their rehabilitation in denial proceedings. 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, those applicants by listing the standard rehabilitation criteria applicable to those applicants.

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

Operative July 1, 2020, BPC section 480 will prohibit the Board 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 criminal 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 criminal conviction, the Board 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 Board to revise its regulations that establish criteria for evaluating rehabilitation when deciding whether to deny a license based on a criminal conviction. (BPC, § 482, subds. (a)(1) & (b), as added by AB 2138, § 9.) In particular, relevant to the proposed revisions to CCR section 110.1, subsection (b), the Board must decide whether an applicant who does not have a clean parole or probation record, who has not “made a showing of rehabilitation” based on the special criteria in CCR section 110.1, subsection (a), discussed above, or whose application is subject to denial on a basis other than a crime is rehabilitated based on the Board’s standard criteria for evaluating applicants’ rehabilitation. (BPC, § 482, subds. (a)(1) & (b)(2), as added by AB 2138, § 9.) Beginning July 1, 2020, AB 2138 will also expressly authorize the Board to deny a license based on professional misconduct. (BPC, § 480, subd. (a)(2), as added by AB 2138, § 4.) 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 Board must consider when evaluating an applicant pursuant to BPC section 482, subdivisions (a)(1) and (b)(2). Accordingly, the proposal will revise the Board’s existing rehabilitation criteria by adding the criteria specified in CCR section 110.1, subsection (a) and making other minor revisions. Each of these criteria are designed to focus the Board’s evaluation on facts and circumstances relevant to an applicant’s rehabilitation, so that the Board 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 Board pursuant to DCA's recommended rehabilitation criteria.

The rationale for each criterion is as follows:

Nature and gravity of the crime or act: The Board will consider the nature and gravity of the crime or act for the same reasons that this criterion is included among the special rehabilitation criteria in CCR section 110.1, subsection (a), discussed above. This is the offense or misconduct against which the Board will judge the applicant's rehabilitation. This is also already an existing regulatory criterion. The Board proposes to amend "severity" to "gravity." This is not a substantive change and would make the regulation internally consistent.

Evidence of subsequent acts or crimes: The Board 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 Board'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 Board would omit "which also could be considered as grounds for denial [under BPC section 480]" from this criterion because, beginning July 1, 2020, BPC section 480 will no longer specify, as grounds for denial, acts that, if subsequently committed by a licensee, will nonetheless continue to be germane to a licensee's potential for recidivism, including dishonest, fraudulent, or deceitful acts or acts that would be grounds for suspension or revocation of a license. (Compare BPC, § 480, subs. (a)(2) & (a)(3), as amended by AB 2138, § 3; BPC, § 480, subd. (a), as added by AB 2138, § 4.) The proposal will enable the Board to consider these and other acts that are not specified in BPC section 480 but are germane to a licensee's potential for recidivism.

Time elapsed: The Board 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.

Compliance with sanctions: The Board will consider whether the applicant complied with parole, probation, restitution or other sanctions imposed on the applicant. The Board proposes amending "The extent to which," to "Whether," but does not view this as a substantive change. The change would make this subsection consistent with subsection (d). 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 for prior misconduct and willingness to conform to the rules of licensure. Accordingly, it is necessary for the Board to consider these elements to evaluate an applicant's reformation from prior misconduct.

Criteria from new subsection (a): The Board will include the special rehabilitation criteria in CCR section 110.1, subsection (a), discussed above, as part of its revised list of standard rehabilitation criteria. 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 sentence without a violation of parole or probation, the Board would first evaluate their eligibility for licensure under the special criteria in CCR section 110.1, subsection (a). If the applicant did not demonstrate sufficient rehabilitation under the special criteria in subsection (a), the Board would apply the other criteria in CCR section 110.1, subsection (b). For applicants with a criminal conviction that did not complete their criminal sentence without a violation of parole or probation, the Board would apply all of the standard criteria in subsection (b), which incorporates the special criteria from subsection (a). This way, similarly-situated applicants (those being considered for denial based on a criminal conviction) have the benefit of being evaluated by the same set of criteria.

Evidence of rehabilitation submitted by applicant: The Board would consider rehabilitation evidence the applicant submitted. The proposal would not change this criterion. Until July 1, 2020, the Board is required to consider such evidence under BPC section 482, subdivision (b). Beginning July 1, 2020, the Board will be required to consider such evidence under BPC section 481, subdivision (c). It is necessary to retain this requirement in order to consolidate the Board's rehabilitation criteria in one place.

Section 110.1, subsection (c)

Purpose: The purpose of amending CCR section 110.1, subsection (c) is to comply with the requirements of AB 2138, section 9, adding BPC section 482, subdivisions (a)(2) and (b)(1), which, beginning July 1, 2020, will require the Board, when considering the suspension or revocation of a license based on a crime pursuant to BPC section 490, to consider whether a licensee has made a showing of rehabilitation based on their having completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating a licensee in this category, the proposal also seeks to provide a special list of criteria for the Board to consider for these licensees. For uniformity purposes, the proposal follows the same approach as discussed above regarding the criteria set forth in CCR section 110.1, 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 Board to consider rehabilitation in the narrow context of a licensee with a criminal conviction 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 Benefits: The proposed revisions to CCR section 110.1, subsection (c) are intended to provide transparency and clarity to licensees with a criminal conviction who have completed their criminal sentence without a violation of parole or probation. Providing the special list of rehabilitation criteria would help those licensees understand the facts and documents to present to the Board to demonstrate their rehabilitation in suspension or revocation proceedings. The proposal would also assist relevant parties to any administrative appeal arising from a license suspension or revocation (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 have criminal convictions and completed parole or probation without a violation, by listing the special rehabilitation criteria applicable to those licensees.

Rationale: Existing law requires boards to develop criteria to evaluate the rehabilitation of a licensee when considering denying, suspending, or revoking a license, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) Operative July 1, 2020, the Board must decide, when considering suspension or revocation of a license based on a crime pursuant to BPC section 490, whether the licensee has “made a showing of rehabilitation” based on their having completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subds. (a)(2) & (b)(1), as added by AB 2138, § 9.)

To implement AB 2138 and maintain consistency in how the Board evaluates rehabilitation evidence between license denial proceedings and license suspension or revocation proceedings, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation when deciding whether to suspend or revoke a license based on a criminal conviction. (BPC, § 482, subds. (a)(2) & (b), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating a licensee pursuant to BPC section 482, subdivisions (a)(2) and (b)(1). 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 § 110.1, 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 Board 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.

Accordingly, the proposal specifies the following special criteria for the Board to consider when making the determination that the licensee with a criminal conviction who has successfully completed the criminal sentence without a violation of parole or probation 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 Board in evaluating rehabilitation. Because BPC section 482, subdivisions (a)(2) and (b)(1) will require the Board to evaluate rehabilitation in the narrow context of a licensee with a criminal conviction who completed the criminal sentence without violating parole or probation, each of these criteria are narrow in scope and would provide to the Board information specific to the licensee's criminal sentence and terms or conditions of parole or probation, so that the Board 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 Board considers rehabilitation criteria, and uniformity with other DCA boards, the proposed criteria were adopted by the Board pursuant to DCA's recommended rehabilitation criteria.

The rationale for each criterion is as follows:

Nature and gravity of the crime: The Board 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 Board 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"].)

Modification of probation period: The Board 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.

Terms or conditions of parole or probation: The Board 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 Board 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"].)

Modification of terms and conditions: The Board 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 Board'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 Board's evaluation of the licensee's rehabilitation and willingness to conform to the rules of licensure.

Section 110.1, subsection (d)

Purpose: The purpose of amending CCR section 110.1, subsection (d) is to conform this subsection, setting forth the standard rehabilitation criteria applicable in suspension and revocation proceedings, with the changes the Board proposes in CCR section 110.1, subsection (b) to implement BPC section 482, subdivisions (a)(1) and (b)(2), setting forth the standard rehabilitation criteria applicable in denial proceedings. Beginning July 1, 2020, BPC section 482, subdivisions (a)(2) and (b)(2), like subdivisions (a)(1) and (b)(2), will require the Board, when considering the suspension or revocation of a license based on a crime pursuant to BPC section 490, to consider whether a licensee has made a showing of rehabilitation if: (1) the licensee has not completed the criminal sentence at issue without a violation of parole or probation; or (2) the Board does not find that the licensee made a sufficient showing of rehabilitation based on the special criteria in CCR section 110.1, subsection (c). (BPC, § 482, subs. (a)(2) & (b)(2), as added by AB 2138, § 9.) Because the Board may also suspend or revoke a license based on something other than a crime, such as a disciplinary action taken under non-California law, as described in BPC section 141, the Board's standard rehabilitation criteria will also be applied in those proceedings.

As AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating a licensee pursuant to BPC section 482, subdivisions (a)(2) and (b)(2), the proposal also seeks to provide a specific, more comprehensive list of standard rehabilitation criteria for the Board 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 Board may be considering “act(s)” that are the basis for suspension or revocation, since the Board may, for instance, be evaluating the rehabilitation of a licensee where the ground for suspension or revocation involves a disciplinary action taken under non-California law. The list of criteria incorporates the special criteria from CCR section 110.1, subsection (c), discussed above, so that similarly-situated licensees have the opportunity to be evaluated by the Board 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 CCR section 110.1, subsection (b), discussed above.

Anticipated Benefits: The proposed revisions to CCR section 110.1, subsection (d) would provide transparency and clarity to licensees who: (1) have not completed their criminal sentence without a violation of parole or probation; (2) have not made a sufficient showing of rehabilitation based on the special criteria in CCR section 110.1, subsection (c), discussed above; or (3) whose license is subject to suspension or revocation on a basis other than a crime. Providing the revised list of standard rehabilitation criteria would help those licensees understand the facts and documents to present to the Board to demonstrate their rehabilitation in suspension or revocation proceedings. The proposal would also assist relevant parties to any administrative appeal arising from a license suspension or revocation (e.g., the Deputy Attorney General, the Administrative Law Judge, and the licensee’s counsel) in advocating for or against, or deciding upon, those licensees by listing rehabilitation criteria applicable to those licensees.

Rationale: Existing law requires boards to develop criteria to evaluate the rehabilitation of a licensee when considering denying, suspending, or revoking a license, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) Operative July 1, 2020, the Board must decide, when considering suspension or revocation of a license based on a crime pursuant to BPC section 490, whether a licensee who does not have a clean parole or probation record or who has not “made a showing of rehabilitation” based on the special criteria in CCR section 110.1, subsection (c), discussed above, has made a showing of rehabilitation based on the standard rehabilitation criteria developed by the Board. (BPC, § 482, subds. (a)(2) & (b)(2), as added by AB 2138, § 9.)

To implement AB 2138 and maintain consistency in how the Board evaluates rehabilitation between license denial proceedings and license suspension or revocation proceedings, it is necessary for the Board to revise its regulations that establish criteria for evaluating rehabilitation when deciding whether to suspend or revoke a license based on a criminal conviction. (BPC, § 482, subds. (a)(2) & (b), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Board must consider when evaluating a licensee pursuant to BPC section 482, subdivisions (a)(2) and (b)(2). Accordingly, the proposal will revise the Board's existing rehabilitation criteria by adding the criteria specified in CCR section 110.1, subsection (c) and making other minor revisions. Each of these criteria are designed to focus the Board's evaluation on facts and circumstances relevant to a licensee's rehabilitation, so that the Board 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 Board pursuant to DCA's recommended rehabilitation criteria.

The rationale for each criterion is as follows:

Nature and gravity of the crime or act: The Board will consider the nature and gravity of the crime or act for the same reasons that this criterion is included among the special rehabilitation criteria in CCR section 110.1, subsection (c), discussed above. This is the offense or misconduct against which the Board will judge the licensee's rehabilitation. This is also already an existing regulatory criterion. The Board proposes to amend "severity" to "gravity" and "offense" to "crime." These are not substantive changes and would make the regulation internally consistent.

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

Time elapsed: The Board 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.

Compliance with sanctions: The Board 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 for prior misconduct and to conform to the rules of licensure. Accordingly, it is necessary for the Board to consider these elements to evaluate a licensee's reformation from prior misconduct.

Criteria from new subsection (c): The Board will include the special rehabilitation criteria in CCR section 110.1, subsection (c), discussed above, as part of its standard

rehabilitation criteria. 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 sentence without a violation of parole or probation, the Board would first evaluate their eligibility for licensure under the special criteria in CCR section 110.1, subsection (c). If the licensee did not demonstrate sufficient rehabilitation under the special criteria in subsection (c), the Board would apply the other criteria in CCR section 110.1, subsection (d). For licensees that did not complete their criminal parole or probation without a violation, the Board would apply all of the standard criteria in subsection (d), which incorporates the special criteria from subsection (c). This way, similarly-situated licensees (those whose licenses are being considered for suspension or revocation based on a criminal conviction) have the benefit of being evaluated by the same criteria.

Evidence of dismissal proceedings: The Board would consider evidence that a licensee's criminal 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 Board'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.)

Evidence of rehabilitation submitted by licensee: The Board would consider rehabilitation evidence the licensee submitted. This is an existing regulatory criterion. Until July 1, 2020, the Board is required to consider such evidence under BPC section 482, subdivision (b). Beginning July 1, 2020, the Board will be required to consider such evidence under BPC 481, subdivision (c). It is necessary to retain this requirement in order to maintain consistency between the Board's evaluation of rehabilitation in license denial proceedings and license suspension or revocation proceedings.

Section 110.1, subsection (e)

Purpose: The purpose of amending CCR section 110.1, subsection (e) is to conform this subsection, specifying the rehabilitation criteria applicable in reinstatement proceedings, with the changes the Board proposes in CCR section 110.1, subsections (c) and (d) to implement BPC section 482, subdivisions (a)(2) and (b), setting forth the rehabilitation criteria applicable in suspension and rehabilitation proceedings.

Anticipated Benefits: The proposed revisions to CCR section 110.1, subsection (e) would provide transparency and clarity to petitioners for reinstatement of a license. Referencing the lists of rehabilitation criteria the Board proposes in CCR section 110.1, subsections (c) and (d) as the criteria the Board will also apply in reinstatement proceedings would help those petitioners understand the facts and documents to

present to the Board to demonstrate their rehabilitation in those proceedings. The proposal would also assist relevant parties to any administrative appeal arising from denial of a petition for reinstatement (e.g., the Deputy Attorney General, the Administrative Law Judge, and the petitioner's counsel) in advocating for or against, or deciding upon, those petitioners, by specifying the rehabilitation criteria applicable to those petitioners.

Rationale: Existing law requires boards to develop criteria to evaluate the rehabilitation of a licensee when considering denying, suspending, or revoking a license, and to consider evidence of rehabilitation in making such decisions. (BPC, § 482.) Operative July 1, 2020, the Board must decide, when considering suspension or revocation of a license based on a crime pursuant to BPC section 490, whether the licensee has "made a showing of rehabilitation" based on either: (1) having completed their criminal sentence without a violation of parole or probation; or (2) the Board's standard criteria for evaluating the rehabilitation of applicants. (BPC, § 482, subds. (a)(2) & (b), as added by AB 2138, § 9.) The lists of rehabilitation criteria the Board proposes in CCR section 110.1, subsections (c) and (d) would implement this requirement.

Currently, CCR section 110.1, subsection (c) requires the Board, when considering a petition for reinstatement of a license, to consider the same rehabilitation criteria that the Board uses in suspension and revocation proceedings. To implement AB 2138 and maintain consistency in how the Board evaluates rehabilitation evidence between license suspension and revocation proceedings and license reinstatement proceedings, the proposal would redesignate this provision as subsection (e) and revise this provision to incorporate the lists of rehabilitation criteria the Board proposes in CCR section 110.1, subsections (c) and (d) by reference as the criteria the Board will also apply in reinstatement proceedings.

Underlying Data

1. June 13, 2018 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
2. September 12, 2018 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
3. December 13-14, 2018 Board Meeting Minutes
4. February 27, 2019 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes

Business Impact

The proposed regulations will not have a significant adverse economic impact on businesses as the regulations do not directly affect businesses. This initial determination is based on the purpose of AB 2138, which sought to reduce barriers to licensure for applicants and licensees with criminal histories or licensure discipline. It is

also based on the lack of testimony at the Board's meeting that the regulation would impact businesses. The Board anticipates that the proposed regulations will impact businesses to the extent that individual applicants or licensees are able to be licensed or retain licensure under the proposal. The Board 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 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 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 make it easier for 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 would increase their access to licensed architects.
- 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 regulates applicants and licensees and their qualifications for licensure following a criminal conviction or disciplinary action. It does not involve environmental issues.

Specific Technologies or Equipment

This regulation does not mandate 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 action is proposed or would be as effective or less burdensome to affected private persons and 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 reasons each alternative was rejected:

- Option 1: To pursue a regulatory change that requires the Board 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 Board 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 Board rejected this option.
- Option 2: Do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because per AB 2138, the Board is mandated to adopt proposed regulations by July 1, 2020.