

**California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 13.6. Respiratory Care Board**

SECOND MODIFIED TEXT

Legend:

Changes addressed in Notice of Proposed Regulatory Action (45-day comment period):

- Deleted text is indicated by ~~strikethrough~~
- Added text is indicated with an underline

Modified Text (15-day comment period):

- Deleted text is indicated by ~~double strikethrough~~
- Added text is indicated by double underline

Second Modified Text (15-day comment period):

- Deleted text is indicated by ~~*italic double strikethrough*~~
- Added text is indicated by *italic double underline*

Amend section 1399.370 to read:

§ 1399.370. Substantial Relationship Criteria.

(a) For the purposes of denial, suspension, or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with section 475) of the B&P, Sections 3750, 3750.5, and 3755 of the B&P, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of a respiratory care practitioner person, the profession in which the applicant seeks licensure, or in which the licensee is licensed, holding the license.

(c) For purposes of subdivision (a), Such substantially related crimes, professional misconduct or acts include but are not limited to those involving the following:

(a1) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the B&P.

(b2) Commission of an act or conviction of a crime involving fraud, fiscal dishonesty theft, or larceny.

(e3) Commission of an act or conviction of a crime involving driving under the influence or reckless driving while under the influence.

(d4) Commission of an act or conviction of a crime involving harassment or stalking ~~as defined by the Penal Code and/or Civil Code.~~

(e5) Commission of an act or conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure, ~~as defined by the Penal Code.~~

(f6) Commission of an act or conviction of a crime involving human trafficking, ~~as defined by the Penal Code.~~

(g7) Commission of an act or conviction of a crime involving gross negligence in the care of an animal or any form of animal cruelty ~~as defined by the B&P or Penal Code.~~

(h8) Failure to comply with a court order.

(i9) Commission of an act or conviction of a crime, involving verbally abusive conduct or unlawful possession of a firearm or weapon.

(10) Commission of an act or conviction of a crime, of neglect, endangerment, or abuse involving a person under 18 years of age or over 65 years of age, or a dependent adult, without regard to whether the person was a patient.

Note: Authority cited: Sections ~~481 and~~ 481 and 3722, Business and Professions Code. Reference: Sections 141, 480, 481, ~~488, 490, 492, 493,~~ 3750, 3750.5, 3752, 3752.5, 3752.6, 3752.7, 3754.5, and 3755, Business and Professions Code; and Sections ~~266, 288, 314, 646.9, 647, 1203.097, 11414, 13519.6 and 13519.7,~~ Penal Code.

Amend section 1399.372 to read:

§ 1399.372. Rehabilitation Criteria for Denials, Suspensions, ~~or~~ Revocations, Petitions for Reinstatement, or Probation Modification

~~(a) When considering the denial, petition for reinstatement, modification of probation, suspension or revocation of an RCP license, the board will consider the following criteria in evaluating the rehabilitation of such person and his or her eligibility for a license:~~

~~(a) The nature and severity of the act(s) or offense(s).~~

~~(b) The total criminal record.~~

~~(c) The time that has elapsed since the commission of the act(s) or offense(s).~~

~~(d) Compliance with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against such person.~~

~~(e) Evidence of any subsequent act(s) or crime(s) committed.~~

~~(f) Any other evidence of rehabilitation submitted that is acceptable to the board, including:~~

(1) Successful completion of respiratory care courses with a "C" or better, as determined by the institution;

(2) Active continued attendance or successful completion or rehabilitative programs such as 12-step recovery programs or psychotherapy counseling;

(3) Letters relating to the quality of practice signed under penalty of perjury from licensed health care providers responsible for the supervision of his/her work.

(g) Statements, letters, attestations of good moral character, or references relating to character, reputation, personality, marital/family status, or habits shall not be considered rehabilitation unless they relate to quality of practice as listed in section (f).

(a) When considering the denial of an RCP respiratory care practitioner license pursuant to section 480 of the B&P on the grounds that the applicant ~~was~~ has been convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation ~~and is presently fit for a license~~, if the applicant completed the criminal sentence at issue without a violation of parole or probation.- In making this determination, the board ~~will~~shall consider the following criteria ~~in evaluating the rehabilitation of such person and his or her fitness for a license~~:

(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.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) ~~If subdivision (a) is inapplicable~~ If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the denial is based on professional misconduct, or the denial is based on one or more grounds specified in Sections 3750, 3750.5, ~~and~~ 3755 of the B&P, the board shall apply the following criteria in evaluating an applicant's rehabilitation. ~~The board shall find that the applicant made a showing of rehabilitation and is presently fit for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:~~

(1) The nature and ~~severity~~gravity of the act(s), professional misconduct, or crimes(s) under consideration as grounds for denial.

(2) Evidence of any act(s), ~~professional misconduct~~, or crime(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial under Section 480 of the B&P.

(3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in paragraph (1) or (2).

(4) Whether the ~~a~~Applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the ~~a~~Applicant.

(5) The criteria in subdivision (a)(1)-(5), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the ~~a~~Applicant.

(c) When considering the petition for reinstatement, modification of probation, suspension or revocation of an ~~RC~~Respiratory care practitioner license on the ground that the licensee has been ~~was~~ convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation ~~and is presently fit for a license~~, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the ~~applicant's~~licensee's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

~~(d) If subdivision (a) is inapplicable—If the ~~applicant~~licensee has not completed the criminal sentence at issue without a violation of parole or probation, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (c), the ~~denial~~petition for reinstatement, modification of probation, suspension, or revocation of a respiratory care practitioner license is based on disciplinary action as described in Section 141 of the Business and Professions Code professional misconduct, or the petition for reinstatement, modification of probation, suspension, or revocation of a respiratory care practitioner license ~~denial~~ is based on one or more of the grounds specified in Sections 3750, 3750.5, and/or 3755, the board shall apply the following criteria in evaluating a licensee's rehabilitation. ~~The board shall find that the licensee made a showing of rehabilitation and is presently fit for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:~~~~

(1) The nature and ~~severity~~gravity of the act(s), ~~unprofessional conduct~~professional misconduct, or crimes(s).

(2) The total criminal record.

(3) The time that has elapsed since commission of the act(s), ~~unprofessional conduct~~professional misconduct, or crime(s).

(4) ~~Compliance~~Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against ~~such person~~the licensee.

(5) The criteria in subdivision (c)(1)-(5), as applicable.

(6) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.

(7) Evidence of any subsequent act(s) or crime(s) committed.

(8) Any other evidence of rehabilitation submitted that is acceptable to the board, including:

(i) Successful completion of respiratory care courses with a "C" or better, as determined by the institution;

(ii) Active continued attendance or successful completion or rehabilitative programs such as 12-step recovery programs or psychotherapy counseling;

(iii) Letters relating to the quality of practice signed under penalty of perjury from licensed health care providers responsible for the supervision of his/her work.

(9) Statements, letters, attestations of good moral character, or references relating to character, reputation, personality, marital/family status, or habits shall not be considered rehabilitation unless they relate to quality of practice as listed in section (d)(8)(iii).

Note: Authority cited: Sections ~~482 and~~ 481, 482, and 3722, Business and Professions Code.

Reference: Sections 141, 475, 480, 481, 482, 488, 490, 493, 3750, 3750.5, 3751, and 3753, and 3755, Business and Professions Code.