

**State of California  
Office of Administrative Law**

**In re:**  
**Respiratory Care Board**

**Regulatory Action:**

**Title 16, California Code of Regulations**

**Adopt sections:**

**Amend sections:** 1399.370, 1399.372

**Repeal sections:**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2021-0311-01**


**OAL Matter Type: Regular (S)**

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This rulemaking action by the Respiratory Care Board proposes to adopt criteria to evaluate the rehabilitation of an applicant or licensee when considering the denial, suspension, or revocation of a license or certificate. The action also includes criteria for determining when a crime is substantially related to the qualification, functions, and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed in compliance with Assembly Bill 2138 (Stats. 2018, ch. 995).

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 8/17/2021.

**Date:** August 17, 2021

  
Peggy J. Gibson  
Senior Attorney

**For:** Kenneth J. Pogue  
Director

**Original:** Stephanie Nunez , Executive  
Director

**Copy:** Christine Molina

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

# REGULAR

Instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2020-0519-02</b>	REGULATORY ACTION NUMBER <b>2021-0311-015</b>	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

**AUG 17 2021**  
1:10 pm

AGENCY WITH RULEMAKING AUTHORITY  
**Respiratory Care Board of California - Department of Consumer Affairs**

AGENCY FILE NUMBER (If any)  
**N/A**

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b> ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S)  
**Substantial Relationship/Rehabilitation Criteria**

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT
	AMEND <b>1399.370 and 1399.372</b>
	REPEAL

TITLE(S)  
**16**

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)  
**October 29, 2020 and 5pm on November 13, 2020** *May 17, 2021 - June 1, 2021*

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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*per agency request*

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) <b>Kimberly Kirchmeyer, Director, Department of Consumer Affairs</b> <i>Kimberly Kirchmeyer</i>		

7. CONTACT PERSON <b>Christine Molina</b>	TELEPHONE NUMBER <b>(916) 999-2230</b>	FAX NUMBER (Optional) <b>(916) 263-7311</b>	E-MAIL ADDRESS (Optional) <b>christine.molina@dca.ca.gov</b>
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Stephanie Nunez</i>	DATE <b>Feb 5, 2021</b>
TYPED NAME AND TITLE OF SIGNATORY <b>Stephanie Nunez, Executive Officer</b>	

For use by Office of Administrative Law (OAL) only

**ENDORSED - APPROVED**

**AUG 17 2021**

**Office of Administrative Law**

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

**ORDER OF ADOPTION**

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.

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

(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 3722, Business and Professions Code.  
Reference: Sections 141, 480, 481, 490, 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, Revocations, Petitions for Reinstatement, or Probation Modification**

~~(a) When considering the denial, petition for reinstatement, modification of probation, suspension or revocation of an RGP 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 a respiratory care practitioner license pursuant to section 480 of the B&P on the grounds that the applicant has been convicted of a crime,

the board shall consider whether the applicant made a showing of rehabilitation, if the applicant 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 rehabilitation.

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

(b) 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, or 3755 of the B&P, the board shall apply the following criteria in evaluating an applicant's rehabilitation:

(1) The nature and gravity of the act(s), professional misconduct, or crime(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 applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

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

(6) Evidence, if any, of rehabilitation submitted by the applicant.

(c) When considering the petition for reinstatement, modification of probation, suspension or revocation of a respiratory care practitioner license on the ground that the licensee has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation, 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 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 the 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 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, or the petition for reinstatement, modification of probation, suspension, or revocation of a respiratory care practitioner license is based on one or more of the grounds specified in Sections 3750, 3750.5, or 3755, the board shall apply the following criteria in evaluating a licensee's rehabilitation:

(1) The nature and gravity of the act(s), unprofessional conduct, or crime(s).

(2) The total criminal record.

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

(4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against 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 481, 482, and 3722, Business and Professions Code.  
Reference: Sections 141, 475, 480, 481, 482, 488, 490, 493, 3750, 3750.5, 3751, 3753, and 3755, Business and Professions Code.