

CEMETERY AND FUNERAL BUREAU

MODIFIED TEXT

Proposed amendments to the regulatory language are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

Modifications to the proposed regulatory language are shown in double underline for new text and ~~double strikethrough~~ for deleted text.

(1) Amend Section 2330 of Title 16 of the California Code of Regulations to read as follows:

§ 2330. Substantial Relationship Criteria.

(a) This section applies to all licenses, as defined in Section 23.7 of the Business and Professions Code, that are covered by this division, including, but not limited to, licenses for cemetery-related businesses or professions, cremation- or hydrolysis-related businesses or professions, or remains disposal.

~~(a)(b) For the purposes of denial, suspension~~ suspension, or revocation of a license, ~~as defined in Section 23.7 of the Business and Professions Code, covered by this division, including, but not limited to, a license for a cemetery related business or profession, a cremation- or hydrolysis-related business or profession, or remains disposal,~~ pursuant to Section 141, 7691, 7711.3, or Division 1.5 (commencing with Section 475) of the Business and Professions Code, or pursuant to any section of the Cemetery and Funeral Act (Chapter 12 (commencing with Section 7600) of Division 3 of the Business and Professions Code) that cites Division 1.5 of the Business and Professions Code as providing grounds for denial, suspension, or revocation of a license, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, ~~functions~~ functions, or duties of ~~a cemetery broker or salesperson licensee~~ the practice or profession in which the applicant seeks licensure or in which the licensee is licensed if to a substantial degree it evidences present or potential unfitness of ~~a cemetery broker or salesperson~~ the applicant or licensee to perform the functions authorized by ~~his or her~~ the license in a manner consistent with the public health, safety, or welfare. ~~Such crimes or acts shall include but not be limited to those involving the following:~~

~~(b)(c)~~ In making the substantial relationship determination required under subdivision ~~(a)(b)~~ for a crime, the bureau 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 the ~~licensee~~ practice or profession in which the applicant seeks licensure or in which the licensee is licensed.

~~(c)(d)~~ For purposes of subdivision ~~(a), (b)~~, substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Cemetery and Funeral Act (Chapter 12 (commencing with Section 7600) of Division 3 of the Business and Professions Code).

(2) Conviction of any crime(s) or act(s) involving dishonesty, misrepresentation, fraud, deceit, stolen property, embezzlement, money laundering, theft, grand theft, larceny, burglary, robbery, identity theft, or obtaining money, labor, or property under false pretenses, and/or forgery or counterfeiting.

~~(a)(3)~~ Conviction of ~~a~~ any crime(s) or act(s) involving fiscal dishonesty, in addition to those crime(s) or act(s) listed in paragraph (2).

~~(b) Any violation of the provisions of Chapter 19, Division 3 of the Code.~~

Note: Authority cited: Sections ~~481, 493 and 9630~~ 7606, Business and Professions Code. Reference: Section 141, 475, 480, 481, 488, 490, 492, ~~493 and 493~~, 7606, 7639.08, 7653, 7691, 7711.3, 7711.5, and 7712.5, Business and Professions Code.

(2) Add Section 2330.1 to Article 3 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2330.1. Criteria to Aid in Determining if Felony Financial Crimes Are Directly and Adversely Related to Fiduciary Qualifications, Functions, or Duties of a Cemetery Manager.

(a) For the purposes of Section 480(a)(1)(B)(v) of the Business and Professions Code, a financial crime that is classified as a felony, including felony conspiracy or felony attempt to commit that crime, shall be considered to be directly and adversely related to the fiduciary qualifications, functions, or duties of a cemetery manager if it involves an act of dishonesty, misrepresentation, deceit, fraud, or theft that causes, is intended or expected to cause, or could reasonably be expected to cause, a direct financial benefit to oneself or another or financial harm to another.

(b) For purposes of subdivision (a), financial crimes that are directly and adversely related to the fiduciary qualifications, functions, or duties of a cemetery manager shall include, but are not limited to, the following:

(1) Crimes under Chapter 4, 6, or 7 of Title 7 of Part 1 of the Penal Code relating to forging, stealing, mutilating, or falsifying judicial or public records or documents; falsifying evidence; bribing, influencing, intimidating, or threatening witnesses; or other offenses against public justice, if intended or expected to cause, or if the crimes could reasonably be expected to cause, a direct financial benefit to oneself or another or financial harm to another.

(2) Crimes under Chapters 9 through 10.5, inclusive, of Title 7 of Part 1 of the Penal Code relating to criminal profiteering, money laundering, fraud, or embezzlement.

(3) Crimes under Chapter 4 of Title 8 of Part 1 of the Penal Code relating to robbery.

(4) Crimes under Chapters 2 through 10, inclusive, of Title 13 of Part 1 of the Penal Code relating to burglary, burglarious or larcenous instruments or deadly weapons, forgery or counterfeiting, larceny, embezzlement, extortion, false personation or cheats, or crimes against insured property or insurers.

Note: Authority cited: Sections 480 and 7606, Business and Professions Code.
Reference: Sections 7.5, 480, 7606, 7705 and 7711.3, Business and Professions Code.

(3) Amend Section 2331 of Title 16 of the California Code of Regulations to read as follows:

§ 2331. Rehabilitation Criteria for Rehabilitation Denial of License.

(a) This section applies to all licenses, as defined in Section 23.7 of the Business and Professions Code, that are covered by this division, including, but not limited to, licenses for cemetery-related businesses or professions, cremation- or hydrolysis-related businesses or professions, or remains disposal.

~~(a)~~(b) When considering the denial of a license an application for a license, as defined in Section 23.7 of the Business and Professions Code, covered by this division, including, but not limited to, a license for a cemetery-related business or profession, a cremation- or hydrolysis-related business or profession, or remains disposal, under Section 480, 7639.08(a), 7651.5(g), 7653(a), 7653.7(b), 7712.4, or 7712.5(a) of the Business and Professions Code, the bureau, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, will consider the following criteria: on the ground that the applicant ~~was~~ has been convicted of a crime, the bureau shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the bureau shall consider the following criteria:

(1) The nature and gravity of the crime(s) or act(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)~~(c) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the bureau determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (b), the denial is based

on professional misconduct, or the denial is based on one or more of the grounds other than a criminal conviction that are specified in Section 7612.5(c), 7639.08(a), 7651.5(g), 7653(a), 7653.7(b), or 7712.5(a) of the Business and Professions Code, ~~if subdivision (a) is inapplicable, or the bureau determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a),~~ the bureau shall apply the following criteria in evaluating an applicant's rehabilitation. The bureau shall find that the applicant made a showing of rehabilitation ~~and is presently eligible for a license if,~~ after considering the following criteria, the bureau finds that the applicant is rehabilitated:

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

(2) Evidence of any crime(s), professional misconduct, or act(s) committed subsequent to the crime(s), professional misconduct, or act(s) or ~~crime(s)~~ under consideration as grounds for denial ~~which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.~~

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

(4) ~~The extent to which~~ 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), (b)(1) through (5), as applicable.~~

~~(5)(6)~~ (6) Evidence, if any, of rehabilitation submitted by the applicant.

~~(b) When considering the suspension or revocation of a license on the ground that a cemetery broker or salesperson has been convicted of a crime, the bureau, in evaluating the rehabilitation of such person and his or her eligibility for a license, will consider the following criteria:~~

~~(1) Nature and severity of the act(s) or offense(s).~~

~~(2) Total criminal record.~~

~~(3) The time that has elapsed since commission of the act(s) or offense(s).~~

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

~~(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.~~

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

~~(c) When considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the bureau shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in subsection (a).~~

Note: Authority cited: Sections ~~482, 7606, and 9630-7740~~, Business and Professions Code. Reference: Sections 480, 481, and 482, 488, 490, 493, 7612.5, 7639.08, 7651.5, 7653, 7653.7, 7712.4, 7712.5, 7686, 7690, 7691, 7711.1, 7711.5, 7712.5, and 7713.1, Business and Professions Code.

(4) Add Section 2331.1 to Article 3 of Division 23 of Title 16 of the California Code of Regulations to read as follows:

§ 2331.1. Rehabilitation Criteria for Suspension, Revocation, or Reinstatement of License.

(a) Application of section.

This section applies to all licenses, as defined in Section 23.7 of the Business and Professions Code, that are covered by this division, including, but not limited to, licenses for cemetery-related businesses or professions, cremation- or hydrolysis-related businesses or professions, or remains disposal.

~~(a)~~(b) Suspension or revocation of a license.

~~(1) When considering the suspension or revocation of a license, as defined in Section 23.7 of the Business and Professions Code, covered by this division, including, but not limited to, a license for a cemetery-related business or profession, a cremation or hydrolysis-related business or profession, or remains disposal, on the ground that a licensee has been convicted of a crime, the bureau shall consider whether the licensee made a showing of rehabilitation and is presently eligible for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the bureau shall consider the following criteria:~~

~~(1)(A)~~(A) The nature and gravity of the crime(s) or act(s).

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

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

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

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

~~(b)(2) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the bureau determines that the licensee did not make~~

the showing of rehabilitation based on the criteria in paragraph (1), the suspension or revocation is based on a disciplinary action taken by another entity, as provided in Section 141 of the Business and Professions Code, for an act substantially related to the practice in which the licensee is licensed, or the suspension or revocation is based on one or more of the grounds other than a criminal conviction that are specified in Section 7612.5(c), 7637.4(c), 7637.5(b), 7637.7(b), 7637.8, 7637.10, 7652.7, 7653.2, 7653.35(a), 7653.4, 7653.6(b), 7672.4(a), 7672.6(b), 7672.7(b), 7713(b), or 7713.4 of the Business and Professions Code, Article 6 (commencing with Section 7686) of the Business and Professions Code, or Section 8113.6, 8574, 8778.5(c), or 8785 of the Health and Safety Code. ~~If subdivision (a) is inapplicable, or the bureau determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a),~~ the bureau shall apply the following criteria in evaluating the licensee's rehabilitation. The bureau shall find that the licensee made a showing of rehabilitation ~~and is presently eligible for a license~~ if, after considering the following criteria, the bureau finds that the licensee is rehabilitated:

~~(1)(A)~~ Nature and gravity of the crime(s) or act(s).

~~(2)(B)~~ Total criminal record.

~~(3)(C)~~ The time that has elapsed since commission of the crime(s) or act(s).

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

~~(5)(E)~~ The criteria in ~~subdivision (a)(1) - (5)~~ paragraph (1)(A) through (E), as applicable.

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

~~(7)(G)~~ Evidence, if any, of rehabilitation submitted by the licensee.

~~(c) Petition for Reinstatement.~~ reinstatement.

When considering a petition for reinstatement of a license under this division, under the provisions of Section 11522 of the Government Code, the bureau shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in ~~subdivisions (a) and (b),~~ subdivision (b)(1) and (2), as applicable.

Note: Authority cited: Sections ~~482~~, 7606 and ~~7740~~, Business and Professions Code.
Reference: Sections 141, 481, 482, 488, 490, 493, 7612.5, 7637.4, 7637.5, 7637.7,
7637.8, 7637.10, 7652.7, 7653.2, 7653.35, 7653.4, 7653.6, 7672.4, 7672.6, 7672.7,
7686, 7690, 7691, 7711.1, ~~and~~ 7711.2, 7713, and 7713.4, Business and Professions
Code; Sections 8113.6, 8574, 8778.5, and 8785, Health and Safety Code.