CEMETERY AND FUNERAL BUREAU

Proposed Language

(1) Amend Section 1252 of Title 16 of the California Code of Regulations to read as follows:

§ 1252. Substantial Relationship Criteria.

(a) For the purposes of denial, 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 funeral-related or embalming-related business or profession, pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, ~~functions~~ functions, or duties of a ~~licensed funeral establishment, licensed funeral director, or licensed embalmer~~ licensee if to a substantial degree it evidences present or potential unfitness of a ~~licensed funeral establishment, licensed funeral director, or licensed embalmer~~ licensee to perform the functions authorized by ~~his~~ 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) In making the substantial relationship determination required under subdivision (a) 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.

(c) For purposes of subdivision (a), 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 12, Division 3 of the Business and Professions Code.~~

Note: Authority cited: Sections 482, 492, 493, and 7606, Business and Professions Code. Reference: Sections 141, 480, 481, 488, 490, 493, and 7606, Business and Professions Code.

(2) Add Section 1252.1 to Article 6 of Division 12 of Title 16 of the California Code of Regulations to read as follows:

§ 1252.1. Criteria to Aid in Determining if Felony Financial Crimes Are Directly and Adversely Related to Fiduciary Qualifications, Functions, or Duties of a Funeral Director.

(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 funeral director if it involves an act of dishonesty, misrepresentation, deceit, fraud, or theft that causes, is intended or expected 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 funeral director 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, 7692, 7692.5, 7693, 7705, and 7708, Business and Professions Code.

(3) Amend Section 1253 of Title 16 of the California Code of Regulations to read as follows:

§ 1253. Rehabilitation Criteria for ~~Rehabilitation~~ Denial of License.

(a) 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 funeral-related or embalming-related business or profession, under Section 480 of the Business and Professions Code~~, thebureau, 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 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) 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:

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

~~(b)~~ (2) Evidence of any crime(s) or act(s) committed subsequent to the crime(s) 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.

~~(c)~~ (3) The time that has elapsed since commission of the crime(s) or act(s) ~~or crime(s)~~ referred to in ~~subdivision~~ paragraph (1) or (2).

~~(d)~~ (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), as applicable.

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

Note: Authority cited: Sections 482, 488, 492, ~~and~~ 7606, and 7740, Business and Professions Code. Reference: Sections 480, 481, 482, 488, 493, 7703, and 7708, Business and Professions Code.

(4) Amend Section 1253.5 of Title 16 of the California Code of Regulations to read as follows:

§ 1253.5. Rehabilitation Criteria for ~~Suspensions or Revocations~~ Suspension, Revocation, or Reinstatement of License.

(a) When considering the suspension or revocation of a license, as defined in Section 23.7 of the Business and Professions Code, including, but not limited to, a license for a funeral-related or embalming-related business or profession, on the ground that a ~~licensed funeral establishment, licensed funeral director, or licensed embalmer~~ licensee has been convicted of a crime, the bureau ~~, in evaluating the~~ shall consider whether the licensee made a showing of rehabilitation ~~of such person and his or her eligibility~~ 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 ~~will~~ 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) 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) Nature and ~~severity~~ gravity of the crime(s) or act(s) ~~or offense(s)~~.

(2) Total criminal record.

(3) The time that has elapsed since commission of the crime(s) or 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) The criteria in subdivision (a)(1)-(5), as applicable.

~~(5)~~ (6) If applicable, evidence of ~~expungement~~ dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

~~(6)~~ (7) Evidence, if any, of rehabilitation submitted by the licensee.

~~(b)~~ (c) Petition for 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 ~~Section 1253 of this article~~ subdivisions (a) and (b), as applicable.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections ~~480,~~ 481, 482, 488, 493, 7615, 7616, 7686, 7690, 7691, 7708, 7711, 7711.1, 7713.4, 7735, 7736, 7737, and 7738, Business and Professions Code.