

LICENSE APPLICANTS WHO WERE CONVICTED OF A CRIME OR FORMALLY DISCIPLINED

License applicants who were convicted of a crime or formally disciplined by another licensing board may be denied a license from the Cemetery and Funeral Bureau (Bureau) in certain circumstances. The following information provides general guidance as to how criminal convictions and formal license discipline are considered by the Bureau to determine a license applicant's eligibility for licensure and the process for license denial.

Each license applicant is evaluated on a case-by-case basis to determine license eligibility. A criminal conviction or formal license discipline does not automatically preclude an applicant from Bureau licensure.

FINGERPRINTING FOR CRIMINAL HISTORY REPORT

The Bureau requires all license applicants to submit a full set of fingerprints for purposes of conducting a criminal history record check. (See Business and Professions Code (BPC), § [144](#).)

For more information on how to submit fingerprints, visit this webpage <https://www.cfb.ca.gov/licensee/livescan.shtml>

CRIMINAL CONVICTIONS

Definition of Criminal Conviction

For purposes of license eligibility, a criminal conviction means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt, and the time for appeal of the conviction has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence. (BPC, §§ [7.5](#), [480](#), subd. (h).)

Disclosure of Criminal Conviction on License Application

A license applicant is not required to disclose a criminal conviction on the license application. The Bureau may, however, request mitigating information from a license applicant regarding the applicant's criminal history for purposes of determining substantial relationship or demonstrating evidence of rehabilitation. (BPC, § [480](#), subd. (f)(2).)

Any disclosure by a license applicant of mitigating information is voluntary, and an applicant's decision not to disclose mitigating information will not be a factor in the Bureau decision to grant or deny the license application. (BPC, § [480](#), subd. (f)(2).)

Types of Criminal Convictions Used in Licensing Decisions

Conviction of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made may be grounds for license denial if:

- The conviction occurred within seven years from the date of the license application; or
- The applicant was released from incarceration within seven years from the date of the license application; or
- The applicant is presently incarcerated for the crime. (BPC, § [480](#), subd. (a)(1).)

A criminal conviction that is older than seven years from the date of the license application may also be grounds for license denial if:

- The applicant was convicted of a serious felony, as defined in Penal Code section [1192.7](#); or
- The applicant was convicted of a crime for which registration is required pursuant to Penal Code section [290](#), subdivision (d)(2) or (3); or
- The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the Bureau, and for which the applicant is seeking licensure. (BPC, § [480](#), subd. (a)(1).)
 - Crimes that are directly and adversely related to the fiduciary qualifications, functions, or duties are identified in the California Code of Regulations Title 16 (16 CCR):
 - 16 CCR § [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.
 - 16 CCR § [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.

Substantially Related Criminal Convictions

The Bureau uses the following criteria to evaluate whether a crime is substantially related to the qualifications, functions or duties of a licensee.

A crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of 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 the applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare. (16 CCR, §§ [1252](#) and [2330](#), subs. (b).)

The Bureau uses the following criteria to determine whether a crime is substantially related to the qualifications, functions, or duties of the license.

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 practice or profession in which the applicant seeks licensure or in which the licensee is licensed.
4. A substantially related crime shall include the following:
 - a. 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.
 - b. Conviction of a crime involving fiscal dishonesty. (BPC, § [481](#), subd. (b); 16 CCR, §§ [1252](#) and [2330](#), subs. (b), (c).)

Rehabilitation Criteria

The license applicant is responsible for submitting evidence, if any, to the Bureau of the applicant's rehabilitation following a criminal conviction. The Bureau uses the following criteria to evaluate the applicant's rehabilitation and eligibility for licensure.

(1) If the applicant completed the criminal sentence at issue without a violation of parole or probation, the Bureau considers the following criteria:

- (A) The nature and gravity of the crime(s) or act(s).
- (B) The length(s) of the applicable parole or probation period(s).
- (C) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (D) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (E) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(2) 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 subsection (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 specified in Section 7612.S(c), 7639.0B(a), 7651.5(g), 7653(a), 7653.7(b), or 7712.5(a) of the Business and Professions Code, the Bureau shall apply the following criteria in evaluating an applicant's rehabilitation. The Bureau shall apply the following criteria in evaluating an applicant's rehabilitation:

- (A) The nature and gravity of the crime(s), professional misconduct, or act(s) under consideration as grounds for denial.
- (B) Evidence of any crimes(s), professional misconduct, or act(s) committed subsequent to the crime(s), professional misconduct, or

act(s) under consideration as grounds for denial.

(C) The time that has elapsed since commission of the crime(s), professional misconduct, or act(s) referred to in paragraph (A) or (B).

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

(E) The following criteria, as applicable:

- The nature and gravity of the crime(s) or act(s).
- The length(s) of the applicable parole or probation period(s).
- The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(F) Evidence, if any, of rehabilitation submitted by the applicant. (BPC, § [482](#), subd. (b); 16 CCR, §§ [1253](#) and [2331](#), subs. (b).)

Criminal Conviction Exemptions

The Bureau will not deny a license to an applicant with a criminal conviction if any of the following apply:

- The applicant obtained a certificate of rehabilitation under chapter 3.5 (commencing with section [4852.01](#)) of title 6 of part 3 of the Penal Code. (BPC, § [480](#), subd. (b).)
- The applicant was granted clemency or a pardon by a state or federal executive. (BPC, § [480](#), subd. (b).)
- The applicant made a showing of rehabilitation pursuant to Business and Professions Code section [482](#). (BPC, § [480](#), subd. (b).)
- The conviction was dismissed pursuant to Penal Code sections [1203.4](#), [1203.4a](#), [1203.41](#), [1203.42](#), or [1203.425](#), or a comparable dismissal or expungement. An applicant who has a conviction that was dismissed pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42 must provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice. (BPC, § [480](#), subd. (c).)

The Bureau also will not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication. (BPC, § [480](#), subd. (d).)

PRIOR FORMAL LICENSE DISCIPLINE

The Bureau may deny a license application if the applicant was formally disciplined by a licensing board in or outside California within the preceding seven years from the date of the application based on professional misconduct that would have been cause for discipline before the Bureau and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. (BPC, [480](#), subd. (a)(2).)

However, the Bureau will not deny a license based on prior disciplinary action if the basis for that disciplinary action was a conviction that was dismissed pursuant to Penal Code sections [1203.4](#), [1203.4a](#), [1203.41](#), [1203.42](#), or [1203.425](#), or a comparable dismissal or expungement. (BPC, [480](#), subd. (a)(2).)

Substantially Related Professional Misconduct

The Bureau uses the following criteria to evaluate whether a crime, professional misconduct, or act is substantially related to the qualifications, functions or duties of a licensee.

A crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of 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 the applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare. (16 CCR, §§ [1252](#) and [2330](#), sub. (b).)

Crimes, professional misconduct, or acts includes:

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.
2. Conviction of a crime involving fiscal dishonesty. (BPC, § [481](#), subd. (b); 16 CCR, §§ [1252](#) and [2330](#), subs. (b), (c).)

Rehabilitation Criteria

The license applicant is responsible for submitting evidence, if any, to the Bureau of the licensee's rehabilitation following formal license discipline. The Bureau uses the following criteria to evaluate the applicant's rehabilitation and eligibility for licensure:

- (A) The nature and gravity of the crime(s), professional misconduct, or act(s) under consideration as grounds for denial.
- (B) Evidence of any crimes, professional misconduct, or act(s) committed subsequent to the crime(s), professional misconduct, or act(s) under consideration as grounds for denial.

(C) The time that has elapsed since commission of the crime(s), professional misconduct, or act(s) referred to in paragraph (A) or (B).

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

(E) Evidence, if any, of rehabilitation submitted by the applicant. (BPC, § [482](#), subd. (b); 16 CCR, §§ [1253](#) and [2331](#), subs. (c)(2).)

PROCESS FOR DENIAL OF AN APPLICATION

Procedure to Deny a License Application

If the Bureau denies an application for licensure based solely or in part on the applicant's conviction history, the Bureau will notify the applicant in writing of the following:

1. The denial or disqualification of licensure.
2. Any existing procedure the bureau has for the applicant to challenge the decision or to request reconsideration.
3. That the applicant has the right to appeal the decision.
4. The processes for the applicant to request a copy of their complete conviction history and question the accuracy or completeness of the record pursuant to Penal Code sections [11122 to 11127](#). (BPC, § [480](#), subd. (f)(3).)

Upon denial of an application for a license, the Bureau will do either of the following:

1. File and serve a statement of issues in accordance with [chapter 5](#) (commencing with section 11500) of part 1 of division 3 of title 2 of the Government Code.
2. Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under [chapter 5](#) (commencing with section 11500) of part 1 of division 3 of title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived. (BPC, § [485](#).)

Along with the notice of application denial, the applicant will be provided with the following:

1. The earliest date on which the applicant may reapply for a license, which will

be one year from the date of service of the notice, unless an earlier date or a later date is prescribed by another statute.

2. Notice that all competent evidence of rehabilitation presented will be considered upon a reapplication.
3. A copy of the Bureau rehabilitation criteria. (BPC, § [486.](#))

Process if Applicant Appeals License Denial

If a notice of denial is served on the applicant and the applicant submits a timely written request for a hearing, a hearing will be conducted within 90 days from the date the hearing is requested unless the applicant agrees to a postponement or continuance of the hearing. The Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted. (BPC, § [487.](#))

Except as otherwise provided by law, following a hearing, the Bureau may take any of the following actions:

1. Grant the license effective upon completion of all licensing requirements by the applicant.
2. Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.
3. Deny the license.
4. Take other action in relation to denying or granting the license. (BPC, § [488](#), subd. (a).)

The Bureau will issue a decision following the hearing. If the license is denied, the decision will inform the applicant:

1. The earliest date on which the applicant may reapply for a license.
2. Notice that all competent evidence of rehabilitation presented will be considered upon a reapplication.
3. A copy of the rehabilitation criteria. (BPC, § [486.](#))