

**State of California
Office of Administrative Law**

In re:
Bureau of Household Goods and Services

Regulatory Action:

Title 4, California Code of Regulations

Amend sections: 1380, 1381

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

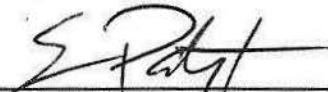
OAL Matter Number: 2020-1023-01

OAL Matter Type: Regular (S)

In this action, the Bureau of Household Goods and Services adopts criteria to be used in determining whether a crime, professional misconduct, or other act is substantially related to the professional practice of its licensees for purposes of license denial, suspension, or revocation. The action adopts criteria for determining whether an applicant for a license, or for reinstatement of a license, or for the modification or termination of probation of a license, has been rehabilitated subsequent to a criminal conviction, professional misconduct, or other act. The action also adopts criteria for determining whether a licensee has been rehabilitated, subsequent to a criminal conviction, professional misconduct, or other act, when considering whether to suspend or revoke their license.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/9/2021.

Date: April 9, 2021


Eric Partington
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Nicholas Oliver, Bureau Chief
Copy: Diana Godines

NOTICE PUBLICATION/REGULATION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2020-1023-01	EMERGENCY NUMBER
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

APR 09 2021

1:49 PM

AGENCY WITH RULEMAKING AUTHORITY

Bureau of Household Goods and Services

AGENCY FILE NUMBER (If any)

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 ☐ Notice re Proposed Regulatory Action ☐ Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Substantial Relationship Criteria and 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)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 4		AMEND 1380, 1381	
		REPEAL	
3. TYPE OF FILING			
☒ Regular Rulemaking (Gov. Code §11346) ☐ 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. ☐ Emergency Readopt (Gov. Code, §11346.1(h)) ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)			
☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) ☐ File & Print ☐ Print Only			
☐ Emergency (Gov. Code, §11346.1(b)) ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) ☐ 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)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) ☐ Effective on filing with Secretary of State ☐ §100 Changes Without Regulatory Effect ☒ Effective other (Specify) July 1, 2020 (or on filing thereafter)			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
☒ Department of Finance (Form STD. 399) (SAM §6660) ☐ Fair Political Practices Commission ☐ State Fire Marshal			
☒ Other (Specify) Kimberly Kirchmeyer, Director, Department of Consumer Affairs <i>Kimberly Kirchmeyer</i>			
7. CONTACT PERSON Diana Godines		TELEPHONE NUMBER (916) 999-2068	FAX NUMBER (Optional) (916) 921-7279
		E-MAIL ADDRESS (Optional) diana.godines@dca.ca.gov	

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

Yeaphana La Marr

DATE

10/16/2020

TYPED NAME AND TITLE OF SIGNATORY

Yeaphana La Marr, Acting Bureau Chief

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 09 2021

Office of Administrative Law

California Code of Regulations
Title 4. Professional and Vocational Regulations
Division 3. Bureau of Home Furnishings

Order of Adoption

§1380. 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 Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee under Division 8, Chapter 3 (commencing with Section 19000) of the Business and Professions Code, if to a substantial degree it evidences present or potential unfitness of such licensee to perform the functions authorized by his~~the~~ license in a manner consistent with the public health, safety, or welfare. Such crimes shall include but not be limited to:

- ~~(a) Those violations specifically enumerated in Articles 3 through 7, inclusive, and Article 9 of Chapter 3 of Division 8 of the Business and Professions Code. (Chapter 3 of Division 8 of the Business and Professions Code is commonly called the Home Furnishings Act.)~~
- ~~(b) Those violations specifically enumerated in Article 1 of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code. (Article 1 of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code is that portion of the Code which concerns general false and misleading advertising practices.)~~

(b) In making the substantial relationship determination required under subsection (a) for a crime, the Bureau shall consider all of 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 licensee.

(c) For the purposes of subsection (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 or term of Chapter 3 of Division 8 of the Business and Professions Code.
- (2) Crimes or acts involving dishonesty, fraud, deceit, or theft with the intent to benefit oneself or another or to harm another.
- (3) Violating or attempting to violate Article 1 (commencing with Section 17500) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to false or misleading advertising.

(d) If an applicant or licensee wishes to contest a license denial, suspension, or revocation based on a conviction, the applicant or licensee may request a hearing pursuant to Business and Professions Code section 19209 to determine if the license should be denied, suspended, or revoked.

Note: Authority cited: Sections 481 and 19034, Business and Professions Code.
Reference: Sections 141, 475, 480, and 481, 488, 490, 493, 19063, 19064, 19209 and 19210, Business and Professions Code.

§1381. Criteria for Rehabilitation.

~~When considering the denial, suspension or revocation of a license on the ground of conviction of a crime the Bureau will consider the following criteria:~~

- ~~(a) The nature and severity of the offense(s).~~
- ~~(b) Total criminal record.~~
- ~~(c) Extent of time that has elapsed since commission of the offense(s).~~
- ~~(d) Whether the licensee has complied with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.~~
- ~~(e) Evidence, if any, of rehabilitation submitted by the licensee.~~
 - ~~(1) Include (if applicable) evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.~~

(a) When considering the denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code on the grounds that the applicant or licensee has been convicted of a crime, the Bureau shall consider whether the applicant or licensee made a showing of rehabilitation, if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation. In making the determination, the Bureau 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 or licensee'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 probation, the Bureau determines that the applicant did not make the showing of rehabilitation based on the criteria in subsection (a), the denial is based on professional misconduct, or the suspension or revocation is based on a disciplinary action as described in Section 141 of the Code, the Bureau shall apply the following criteria in evaluating an applicant's or licensee's rehabilitation:

- (1) The nature and severity of the crime(s), professional misconduct, disciplinary

action(s), or act(s) that are under consideration as the grounds for denial, suspension, or revocation.

(2) The total criminal record, and evidence of any act(s), professional misconduct, disciplinary action(s), or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, suspension, or revocation under Division 1.5 (commencing with Section 475) of the Business and Professions Code.

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

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

(5) The criteria in subsections (a)(1) through (a)(5), as applicable.

(6) Evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

(7) Whether the applicant or licensee has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(8) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

Note: Authority cited: Sections 482 and 19034, Business and Professions Code.
Reference: Sections 480, 481, and 482, 488, 490 and 493, Business and Professions Code.