

**State of California  
Office of Administrative Law**

**In re:**  
**Contractors State License Board**

**Regulatory Action:**

**Title 16, California Code of Regulations**

**Adopt sections: 868.1**  
**Amend sections: 868, 869, 869.9**  
**Repeal sections: 869.5**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2020-1117-01**

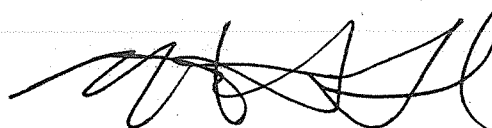
**OAL Matter Type: Regular (S)**

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In this rulemaking action, the Board amends its regulations to set forth substantial relationship criteria and rehabilitation criteria for crimes, professional misconduct, or acts considered substantially related to the qualifications, functions, or duties of a contractor licensee. The Board also adopts a new section related to the denial of a license or registration on basis of a financial crime conviction. The regulatory changes align the regulations 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 5/3/2021.

Date: May 3, 2021



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Thanh Huynh  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: David R. Fogt, Registrar  
Copy: Betsy Figueroa

# REGULAR

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2020-0303-06</b>	REGULATORY ACTION NUMBER <b>2020-117-015</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY <b>Contractors State License Board</b>			

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

**MAY 03 2021**  
*1:29 PM*

### 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 <b>2020, 11-2</b>	PUBLICATION DATE <b>3/13/20</b>	

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

1a. SUBJECT OF REGULATION(S) <b>AB 2138 - Substantial Relationship and Rehabilitation Criteria</b>	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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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 <b>868.1</b>
	AMEND <b>868, 869, and 869.9</b>
<b>TITLE(S)</b>	REPEAL <b>16</b>
	<b>869.5</b>

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)  
**06/10/20 - 06/26/20**

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)

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>Betsy Figueira</b>	TELEPHONE NUMBER <b>916-255-3369</b>	FAX NUMBER (Optional) <b>916-364-0130</b>	E-MAIL ADDRESS (Optional) <b>betsy.figueira@cslb.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>DR Fogt</i>	DATE <b>11-17-2020</b>
TYPED NAME AND TITLE OF SIGNATORY <b>David R. Fogt, Registrar</b>	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**MAY 03 2021**

**Office of Administrative Law**

**CONTRACTORS STATE LICENSE BOARD  
ORDER OF ADOPTION**

**California Code of Regulations  
Title 16, Division 8**

**Article 7. Special Provisions**

**Amend Section 868 as follows:**

§ 868. Criteria to Aid in Determining if Crimes, Professional Misconduct, or Acts Are Substantially Related to Contracting Business Qualifications, Functions, or Duties of a Licensee or Registrant.

(a) For the purposes of denial, suspension, or revocation of a license or registration pursuant to Section 141, Division 1.5 (commencing with Section 475), or Sections 7073 or 7123 of the eCode, a crime, professional misconduct, or act, as defined in Section 480 of the code, shall be considered to be substantially related to the qualifications, functions, or duties of a licensee or registrant (under Division 3, Chapter 9 of the eCode) if it evidences present or potential unfitness of an applicant, or licensee, or registrant to perform the functions authorized by the license or registration in a manner consistent with the public health, safety, and welfare. The crimes or acts shall include, but not be limited to, the following:

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Board or Registrar 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 a contractor or home improvement salesperson.

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

(a1) Any violation of the provisions of Chapter 9 of Division 3 of the eCode or other state or federal laws governing contractors or home improvement salespersons.

(b2) Failure to comply with the provisions of the California Administrative Code of Regulations, Chapter 8, Title 16, Division 8.

(e3) Crimes, professional misconduct, or acts involving dishonesty, fraud, deceit, or theft with the intent to substantially benefit oneself or another or to substantially harm another.

(d4) Crimes, professional misconduct, or acts involving physical violence against persons.

(e5) Crimes, professional misconduct, or acts that indicate a substantial or repeated disregard for the health, safety, or welfare of the public.

Note: Authority cited: Sections 481 and 7008, Business and Professions Code.  
Reference: Sections 141, 480, 481, 490, 493, 7066, 7069, 7073, 7090, 7123, and 7124, Business and Professions Code.

**Add Section 868.1 as follows:**

§ 868.1. Criteria to Aid in Determining if Financial Crimes Are Directly and Adversely Related to Fiduciary Qualifications, Functions, or Duties of a Licensee or Registrant for the Purpose of Considering Denials of Applications.

For the purpose of determining whether there are grounds to deny a license or registration to an applicant who has been convicted of a financial crime currently classified as a felony pursuant to Section 480 of the Code, the crime shall be considered to be directly and adversely related to the fiduciary qualifications, functions, or duties of a licensee or registrant if it involves dishonesty, fraud, deceit, or theft that resulted in: (i) direct financial benefit to the applicant or another person or entity, (ii) direct financial harm to another person or entity, or (iii) an attempt to obtain direct financial benefit or cause direct financial harm to another person or entity. The felony financial crimes shall include, but not be limited to, the following:

(a) Crimes involving the acquisition or provision of false, altered, forged, counterfeit, or fraudulent document(s), or the acquisition or provision of false or fraudulent statement(s).

(b) Crimes involving the use of personal identifying information for an unlawful purpose, including for the purpose of illegally obtaining money, credit, goods, services, real property, or medical information of another person (also known as identify theft).

(c) Crimes involving stolen property, embezzlement, grand theft, larceny, burglary, monetary transactions in property derived from a specified unlawful activity (also known as money laundering), or crimes related to obtaining money, labor, or property under false or fraudulent pretenses.

(d) Crimes involving an attempt or conspiracy to commit such crimes listed in subsections (a), (b), or (c).

(e) For the purposes of this section, "personal identifying information" has the meaning set forth in Penal Code section 530.55.

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Sections 7.5, 480, 7069, 7073, 7090, and 7124, Business and Professions Code.

**Amend Section 869 as follows:**

§869. Criteria for Rehabilitation.

(a) When considering the denial, suspension, or revocation of a license or registration pursuant to Division 1.5 (commencing with Section 475) of the eCode on the ground that the individual has been convicted of a crime, the Board or Registrar shall consider whether the applicant, licensee, or registrant made a showing of rehabilitation if the applicant, licensee, or registrant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board or Registrar in evaluating the applicant's or licensee's rehabilitation and present eligibility for a license will 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; and

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

(b) If subsection (a) is inapplicable, or the Board or Registrar determines that an applicant, licensee, or registrant did not make a showing of rehabilitation based on the criteria in subsection (a), the Board or Registrar shall apply the following criteria in evaluating an applicant's, licensee's, or registrant's rehabilitation:

(1) Subject to the provisions of subsection (a)(2), an applicant or licensee may be determined to be rehabilitated if he or she meets the following criteria. The Board or Registrar shall find that an applicant, licensee, or registrant made a showing of rehabilitation if, after considering the following criteria and the provisions of subsection (b)(2), the Board or Registrar finds that the individual is rehabilitated:

(A) Denial Based on Felony Convictions Within Seven Years of Application

When considering the denial of a license or registration, the Board or Registrar may consider the applicant rehabilitated if the applicant was convicted of a felony within the preceding seven (7) years from the date of application that is substantially related to the qualifications, functions, or duties of a licensee or registration as defined in Section 868, and five (5) years have passed from the time of the applicant's release from incarceration or completion of probation if no incarceration was imposed, without the occurrence of additional substantially-related criminal activity, professional misconduct, acts, or omissions that also could be grounds for denial. This subsection does not apply to any crimes listed in subsection (b)(1)(B).

(B) Denial Based on Serious Felonies, Felonies Requiring Sex Offender Registration, or Felony Financial Crimes Directly and Adversely Related to the Qualifications, Functions, or Duties of a Licensee or Registrant

When considering the denial of a license or registration on the ground that the applicant was convicted of a crime identified in Section 480(a)(1)(A) of the Code or a felony financial crime as defined in Section 868.1, the Board or Registrar may consider an applicant rehabilitated if seven (7) years have passed from the time of the applicant's release from incarceration or completion of probation if no incarceration was imposed, and the applicant committed no additional substantially-related criminal activity, professional misconduct, acts, or omissions that also could be grounds for denial.

(C) Discipline Based on Felony Convictions

(A) When considering the suspension or revocation of a license or registration, the Board or Registrar may consider a licensee or registrant rehabilitated if the licensee or registrant was convicted of a ~~For~~ felony convictions that are ~~is~~ substantially related to the qualifications, functions, or duties of a licensee or registrant as defined in Section 868, and seven (7) years have passed from the time of release from incarceration or completion of probation if no incarceration was imposed, without the occurrence of additional substantially-related criminal activity, ~~or substantially-related acts, or~~ omissions that also could be grounds for suspension or revocation.

(D) Denial or Discipline Based on Misdemeanor Convictions

(B) When considering the denial, suspension, or revocation of a license or registration, the Board or Registrar may consider an applicant, licensee, or registrant rehabilitated if the applicant, licensee, or registrant was convicted of a ~~For~~ misdemeanor convictions that are ~~is~~ substantially related to the qualifications, functions, or duties of a licensee or registrant as defined in Section 868, and three (3) years have passed from the time of release from incarceration or completion of probation if no incarceration was imposed, without the occurrence of additional substantially-related criminal activity, ~~or~~

substantially-related act(s), or omission(s) that also could be grounds for denial, suspension, or revocation.

(E) Denial or Discipline Based on Professional Misconduct, Acts, or Omissions

(C) For professional misconduct or acts that are substantially related to the qualifications, functions, or duties of a licensee or registrant as defined in Section 868, or for other acts or omissions that are grounds for denial, suspension, or revocation, the Board or Registrar may consider the applicant, licensee, or registrant rehabilitated if three (3) years have passed from the time of commission of the professional misconduct, act(s), or omission(s) without the occurrence of additional substantially-related criminal activity, professional misconduct, or additional substantially-related act(s), or omission(s) that also could be grounds for denial, suspension, or revocation.

(2) The amount of time needed to demonstrate rehabilitation under subsection (a)(b)(1) may be increased or decreased by taking into account the following:

(A) The nature and ~~severity~~ gravity of the crime(s), professional misconduct, or act(s), or omission(s) that are under consideration as, or that were, the grounds for denial, suspension, or revocation.

(B) Evidence of any crime(s), professional misconduct, or act(s), or omission(s) committed subsequent to the crime(s), professional misconduct, or act(s), or omission(s) that are under consideration as, or that were, the grounds for denial, suspension, or revocation, which also could be considered as grounds for denial, suspension, or revocation.

(C) The time that has elapsed since commission of the crime(s), professional misconduct, or act(s), or omission(s) that are under consideration as, or that were, the grounds for denial, suspension, or revocation.

(D) The extent to which the applicant, ~~or licensee,~~ or registrant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant, ~~or licensee,~~ or registrant.

(E) Consistent work history subsequent to the release from incarceration, or the completion of probation if no incarceration was imposed, or subsequent to the time of commission of the professional misconduct, act(s), or omission(s).

(F) Documents or testimony from credible individuals who have personal knowledge of the applicant's, ~~or licensee's,~~ or registrant's life and activities subsequent to the time of commission of the crime(s), professional misconduct, or act(s), or omission(s) who can attest to the applicant's, ~~or licensee's,~~ or registrant's present fitness for licensure or registration.

(G) ~~If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code. The acts underlying the conviction have been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.~~

(H) Other relevant evidence, if any, of rehabilitation submitted by the applicant, ~~or licensee, or registrant.~~ For example, relevant evidence may include evidence of recovery from drug and/or alcohol addiction or abuse or completion of a drug and/or alcohol aversion ~~or diversion~~ program if the crime(s), ~~professional misconduct, or act(s), or omission(s)~~ related to or involved drug and/or alcohol use; or evidence of completion of an anger management program if the crime(s), ~~professional misconduct, or act(s), or omission(s)~~ demonstrated the applicant's, ~~or licensee's, or registrant's~~ inability to control one's temper.

~~(bc)~~ When considering a petition for reinstatement of the license of a contractor ~~or the registration of a home improvement salesperson,~~ the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsections ~~(a) and (b) relating to licensees or registrants.~~

Note: Authority cited: Sections ~~481, 482, and 7008,~~ Business and Professions Code.  
Reference: Sections ~~7.5, 141, 480, 481, 482, 488, 490, 493, 496, 7066, 7069, 7073, 7090, 7102, 7123, and 7124,~~ Business and Professions Code.

#### **Repeal Section 869.5 as follows:**

~~§ 869.5. Inquiry into Criminal Convictions.~~

~~The Board may conduct an inquiry into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the crime is substantially related to the qualifications, functions, and duties of a licensee by requiring the applicant or licensee to provide documents including, but not limited to, certified court documents, certified court orders or sentencing documents.~~

Note: Authority cited: ~~Sections 480, 481 and 7008,~~ Business and Professions Code.  
Reference: ~~Sections 480, 481, 493, 7066, 7069 and 7073,~~ Business and Professions Code.

#### **Amend Section 869.9 as follows:**

~~§869.9. Criteria to Aid in Determining Earliest Date a Denied Applicant May Reapply for Licensure or Registration.~~

(a) For an applicant who is denied licensure ~~or registration~~ pursuant to ~~subdivision~~section (a) of Section 480 of the Business and Professions Code, the date of



reapplication shall be set by the Registrar at not less than one (1) year nor more than five (5) years after the denial. When computing the date for reapplication, the time shall commence from the effective date of the decision if an appeal is made or from the service of the notice of denial under Section 485(b) if a request for hearing is not made. The Registrar will consider the following criteria when setting the reapplication date of an individual who was denied a license or registration:

(1) For felony convictions listed in Section 869(b)(1)(B) that are substantially related to the qualifications, functions, or duties of a licensee as defined in Section 868, seven (7) years have passed from the time of release from incarceration or completion of probation if no incarceration was imposed, without the occurrence of additional substantially-related criminal activity, professional misconduct, or substantially-related act(s), or omission(s) that also could be grounds for denial.

(2) For felony convictions not listed in Section 869(b)(1)(B) that are substantially related to the qualifications, functions, or duties of a licensee as defined in Section 868, five (5) years have passed from the time of the applicant's release from incarceration or completion of probation if no incarceration was imposed, without the occurrence of additional substantially-related criminal activity, professional misconduct, act(s), or omission(s) that also could be grounds for denial.

(23) For misdemeanor convictions that are substantially related to the qualifications, functions, or duties of a licensee or registrant as defined in Section 868, three (3) years have passed from the time of release from incarceration or completion of probation if no incarceration was imposed, without the occurrence of additional substantially-related criminal activity, professional misconduct, or substantially-related act(s), or omission(s) that also could be grounds for denial.

(34) For ~~acts~~ professional misconduct that are ~~is~~ substantially related to the qualifications, functions, or duties of a licensee or registrant as defined in Section 868, or for other acts or omissions that are grounds for denial, three (3) years have passed from the time of commission of the professional misconduct, act(s), or omission(s), without the occurrence of substantially-related criminal activity, professional misconduct, or substantially-related act(s), or omission(s) that also could be grounds for denial.

(45) The nature and ~~severity~~ gravity of the crime(s), professional misconduct, or act(s), or omission(s) that were the grounds for denial.

(56) Evidence of any crime(s), professional misconduct, or act(s), or omission(s) committed subsequent to the crime(s), professional misconduct, or act(s), or omission(s) that were the grounds for denial, which also could be considered as grounds for denial.

(67) The time that has elapsed since commission of the crime(s), professional misconduct, or act(s), or omission(s) that were the grounds for denial.

(78) The extent to which the applicant ~~or licensee~~ has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant in connection with the crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial.

(89) Consistent work history subsequent to the release from incarceration, or the completion of probation if no incarceration was imposed, or subsequent to the time date of commission of the crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial.

(910) Documents or testimony from credible individuals who have personal knowledge of the applicant's life and activities subsequent to the time date of commission of the crime(s), professional misconduct, or act(s), or omission(s) that were the grounds for denial and who can attest to the applicant's present fitness for licensure or registration.

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

(11) Other relevant evidence, if any, of eligibility for reapplication submitted by the applicant. For example, relevant evidence may include evidence of recovery from drug and/or alcohol addiction or abuse or completion of a drug and/or alcohol aversion or diversion program if the crime(s), professional misconduct, or act(s), or omission(s) that were the grounds for denial related to or involved drug and/or alcohol use; or evidence of completion of an anger management program if the crime(s), professional misconduct, or act(s), or omission(s) demonstrated the applicant's ~~or licensee's~~ inability to control one's temper.

(b) Nothing in this section shall preclude the ~~Registrar~~ from denying the license or registration of an applicant who was previously denied a license or registration and who is eligible for reapplication in accordance with this section.

Note: Authority cited: Sections 481, 482, and 7008 and 7073, Business and Professions Code. Reference: Sections 480, 482, 485, 486, 496, 7066, 7069, 7073, and 7124, Business and Professions Code.