

**Acupuncture Board**  
**AB 2138 Implementation – Proposed Regulation for**  
**Substantial Relationship Criteria**

**MODIFIED TEXT**

Changes proposed are underlined to denote new text.

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

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***Adopt new section under Article 6 Miscellaneous Provisions of Chapter 13.7 of Title 16 of the California Code of Regulations:***

**§ 1399.469.4 Substantial Relationship Criteria.**

(a) For the purpose of denial, suspension, or revocation of a license pursuant to Section 141, ~~or~~ Division 1.5 (commencing with Section 475), or Sections 4955, 4955.1, or 4955.2 of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of a licensee if, to a substantial degree, it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination required under subsection ~~subdivision~~ (a) for a crime, the board 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 an acupuncturist.

(c) For purposes of subsection (a), a substantially related crime, professional misconduct, or act shall include, but is 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 12, Division 2 of the Business and Professions Code or other state or federal laws governing the practice of acupuncture.

(2) Conviction of a crime involving fiscal dishonesty.

Note: Authority cited: Sections 481, 493, 4933, Business and Professions Code.  
Reference: Sections 141, 480, 481, 490, 493, 4955(b), 4955(h), 4955(i), and 4956,  
Business and Professions Code.

**§ 1399.469.5 Criteria for Rehabilitation – Denial of Licensure.**

(a) When considering the denial of a license under Section 480 of the Business and Professions Code on the ground that the applicant ~~was~~ has been convicted of a crime, the board 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 board 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.
- (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 parole or probation, the board 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 denial is based on one or more of the grounds specified in Sections 4955, 4955.1, and 4955.2 of the Business and Professions Code, the board shall apply the following criteria in evaluating an applicant's rehabilitation: ~~If subdivision (a) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:~~

- (1) The nature and ~~severity~~ gravity of the act(s), professional misconduct or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s), professional misconduct or crime(s) committed subsequent to the act(s), professional misconduct or crime(s) under consideration as grounds for denial ~~under Section 480 of the Business and Professions Code.~~
- (3) The time that has elapsed since commission of the act(s), professional misconduct or crime(s) referred to in ~~subdivision~~ paragraphs (1) 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~~ subsection (a)(1) to (5), as applicable.
- (6) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 482 and 4933, Business and Professions Code.  
Reference: Sections 480, 481, 482, 488, 493, 4938, 4944, 4955, 4955.1, 4955.2, and 4956, Business and Professions Code.

### **§ 1399.469.6 Criteria for Rehabilitation – Suspensions or Revocations.**

(a) When considering the suspension or revocation of a license under Section 490 of the Business and Professions Code on the ground that a person holding a license under the Acupuncture Licensure Act has been convicted of a crime, the board 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 board 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 licensee's rehabilitation.; ~~and~~
- (5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for the modification.

(b) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subsection (a), the suspension or revocation is based on a disciplinary action, as described in Section 141 of the Business and Professions Code, or the suspension or revocation is based on or more of the grounds specified in Sections 4955, 4955.1, or 4955.2 of the Business and Professions Code, the board shall apply the following criteria in evaluating the licensee's rehabilitation:; ~~if subdivision (a) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating a licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:~~

- (1) The nature and severity gravity of the act(s), disciplinary action(s), or crime(s).;
- (2) The total criminal record.;
- (3) The time that has elapsed since commission of the act(s), disciplinary action(s), or crime(s).;

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

(5) The criteria in ~~subsection~~ subdivision (a)(1) to (5), as applicable.

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

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

(c) When considering a petition for reinstatement of a license under the provisions of Section 4960.5 of the Business and Professions Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in subsection (b) of this section.

Note: Authority cited: Sections ~~482 and~~ 4933, Business and Professions Code.

Reference: Sections 141, 475, 480, 481, 482, 488, 493, 4955, 4955.1, 4955.2, and 4956, 4960.5, Business and Professions Code.