



Advisory Committee  
May 21, 2019

**DRAFT LANGUAGE**  
**SUBSTANTIALLY RELATED CRITERIA FOR CONVICTIONS - FUNERAL**

(1) Amend Section 1252 of Division 12 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 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 ~~licensed funeral establishment, licensed funeral director, or licensed embalmer~~ licensee or registrant if to a substantial degree it evidences present or potential unfitness of a ~~licensed funeral establishment, licensed funeral director, or licensed embalmer licensee or registrant~~ under the Cemetery and Funeral Act to perform the functions authorized by his the license or registration 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:~~

~~(a) Conviction of a crime involving fiscal dishonesty.~~

~~(b) Any violation of the provisions of Chapter 12, Division 3 of the Business and Professions Code.~~

(b) In making the substantial relationship determination required under subsection (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 or registrant.

(c) For 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 the Cemetery and Funeral Act.

(2) Conviction of any crime(s) or act(s) related to fraud, stolen property, embezzlement, money laundering, theft, grand theft, larceny, burglary, robbery, identity theft, or obtaining money, labor, or property under false pretenses, misrepresentation, dishonesty, and/or forgery and counterfeiting.

(3) Conviction of crime(s) or act(s) involving fiscal dishonesty, in addition to those crimes listed in subsection (2).

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

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

**§ 1252.1. Criteria to Aid in Determining if Financial Crimes Are Directly and Adversely Related to Qualifications, Functions, and Duties of a Licensee under the Cemetery and Funeral Act for the Purpose of Considering Denials of Applications**

(a) Pursuant to Section 480 of the Code, a financial crime shall be considered to be directly and adversely related to the qualifications, functions, or duties of a licensee or registrant (under Division 3, Chapter 12 of the Code and the California Code of Regulations, Title 16, Division 12) if it is a felony that evidences unfitness of an applicant to perform the functions authorized by the license in a manner consistent with the public health, safety, and welfare because the crime involves dishonesty, misrepresentation, deceit, fraud, or theft that directly and financially benefits oneself or another or financially harms another.

(b) The felony financial crimes that are directly and adversely related to the qualification, functions, or duties of a licensee or registrant shall include, but not be limited to, the following:

(1) Crimes under Chapter 4, 6, or 7 of Part 1 of Title 7 of the Penal Code relating to forging, stealing, mutilating, and falsifying judicial and public records and documents; falsifying evidence and bribing, influencing, intimidating, or threatening witnesses; and other offenses against public justice; respectively.

(2) Crimes under Chapters 8 through 10.5 of Part 1 of Title 7 of the Penal Code relating to conspiracy, criminal profiteering, money laundering, and fraud and embezzlement.

(3) Crimes under Chapter 4 of Part 1 of Title 8 of the Penal Code relating to robbery.

(4) Crimes under Chapters 2 through 10 of Part 1 of Title 13 of the Penal Code relating to burglary, burglarious and larcenous instruments and deadly weapons, forgery and counterfeiting, larceny, embezzlement, extortion, false personation and cheats, and crimes against insured property and insurers.

Note: Authority cited: Sections 480 and 7606, Business and Professions Code.  
Reference: Sections 7.5, 141, 480, 7606, Business and Professions Code.

(3) Amend Section 1253 of Division 12 of Title 16 of the California Code of Regulations to read as follows:

**§ 1253. Rehabilitation Criteria for Rehabilitation Denials**

(a) When considering the denial of an application for licensure-license under Section 480 of the Business and Professions Code, the bureau, 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 subsection (a) is inapplicable, or the bureau determines that the applicant did not make the showing of rehabilitation based on the criteria in subsection (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:

(a1) The nature and severity of the crime(s) or act(s) ~~or crime(s)~~ under consideration as grounds for denial.

(b2) 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.

(c3) The time that has elapsed since commission of the crime(s) or act(s) ~~or crime(s)~~ referred to in subsections (b)(1) or (b)(2).

(d4) ~~Whether~~ The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) The criteria in subsection (a)(1)-(5), as applicable.

(e6) 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 Division 12 of Title 16 of the California Code of Regulations to read as follows:

**§ 1253.5. Rehabilitation Criteria for Suspensions or Revocations**

(a) When considering the suspension or revocation of a license on the ground that a ~~licensed funeral establishment, licensed funeral director, or licensed embalmer licensee or registrant~~ has been convicted of a crime, the bureau, shall consider whether the licensee or registrant made a showing of rehabilitation and is presently eligible for a license or registration, if the licensee or registrant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the bureau shall in evaluating the rehabilitation of such person and his or her eligibility for a license, ~~will~~ 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 subsection (a) is inapplicable, or the bureau determines that the licensee or registrant did not make the showing of rehabilitation based on the criteria in subsection (a), the bureau shall apply the following criteria in evaluating the licensee's or registrant's rehabilitation. The bureau shall find that the licensee or registrant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the bureau finds that the licensee or registrant is rehabilitated:

(1) The nature ~~Nature~~ and severity 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 or registrant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registrant.

(5) The criteria in subsection (a)(1)-(5), as applicable.

~~(56)~~ If applicable, evidence of ~~expungement~~ dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

~~(67)~~ Evidence, if any, of rehabilitation submitted by the licensee.

(c) Petition for Reinstatement. When considering a petition for reinstatement of a license 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 this section.

Note: Authority cited: Sections 482, 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.