

**State of California  
Office of Administrative Law**

**In re:**  
**Cemetery and Funeral Bureau**

**Regulatory Action:**

**Title 16, California Code of Regulations**

**Adopt section: 1252.1**  
**Amend sections: 1252, 1253, 1253.5**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2020-1123-01**

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

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This action by the Cemetery and Funeral Bureau adopts criteria to be used in determining whether a crime, act, or professional misconduct is substantially related to the qualifications, functions, or duties of a licensee, or when a licensee has made a showing of rehabilitation related to a crime, act, or professional misconduct when considering denial, suspension, or revocation of a license or registration. The proposed amendments implement amendments to the Business and Professions Code made by 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 May 10, 2021.

Date: May 10, 2021



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Nicole C. Carrillo  
Attorney

For: Kenneth J. Pogue  
Director

Original: Lisa M. Moore, Bureau Chief  
Copy: Carolina Sammons

**NOTICE PUBLICATION/REGULATION SUBMISSION**

**REGULAR**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2020-0211-12	020-1123-01	

For use by Office of Administrative Law (OAL) only

RECEIVED DATE FEB 11 '20 Office of Administrative Law	PUBLICATION DATE FEB 21 '20	2020 NOV 23 P 3:31 OFFICE OF ADMINISTRATIVE LAW
NOTICE	REGULATIONS	

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

MAY 10 2021  
2:55 pm

AGENCY WITH RULEMAKING AUTHORITY Cemetery and Funeral Bureau - Cemetery Program	AGENCY FILE NUMBER (If any)
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**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Substantial Relationship Criteria	TITLE(S) 16	FIRST SECTION AFFECTED 2330	2. REQUESTED PUBLICATION DATE February 21, 2020
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Carolina Sammons	TELEPHONE NUMBER (916) 574-7876	FAX NUMBER (Optional) (916) 928-7988
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

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

1a. SUBJECT OF REGULATION(S) Substantial Relationship Criteria	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)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT per agency request 1252.1
AMEND 1252, 1253, 1253.5
REPEAL
TITLE(S) 16

3. TYPE OF FILING
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

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)	The Bureau requests that the regulation
May 19 - June 3, 2020	become effective upon filing to align as closely as possible with the statutory implementation date.

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 type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input checked="" 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 type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Carolina Sammons	TELEPHONE NUMBER (916) 574-7876	FAX NUMBER (Optional) (916) 928-7988	E-MAIL ADDRESS (Optional) carolina.sammons@dca.ca.gov
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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>Kimberly Kirchmeyer</i>	DATE Sep 28, 2020
TYPED NAME AND TITLE OF SIGNATORY Kimberly Kirchmeyer, Director, Department of Consumer Affairs	

For use by Office of Administrative Law (OAL) only  
**ENDORSED APPROVED**  
MAY 10 2021  
Office of Administrative Law

## CEMETERY AND FUNERAL BUREAU

### ORDER OF ADOPTION

(1) Amend Section 1252 of Title 16 of the California Code of Regulations to read as follows:

§ 1252. Substantial Relationship Criteria.

(a) This section applies to all licenses, as defined in Section 23.7 of the Business and Professions Code, that are covered by this division, including, but not limited to, licenses for funeral-related or embalming-related businesses or professions.

(b) For the purposes of denial, suspension, or revocation of a license pursuant to Section 141, 7691, or Division 1.5 (commencing with Section 475) of the Business and Professions Code, or pursuant to any section of the Cemetery and Funeral Act (Chapter 12 (commencing with Section 7600) of Division 3 of the Business and Professions Code) that cites Division 1.5 of the Business and Professions Code as providing grounds for denial, suspension, or revocation of a license, 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 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 a licensed funeral establishment, licensed funeral director, or licensed embalmer the applicant or licensee to perform the functions authorized by his the license 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:

(c) In making the substantial relationship determination required under subdivision (b) 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 practice or profession in which the applicant seeks licensure or in which the licensee is licensed.

(d) For purposes of subdivision (b), 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 of the Cemetery and Funeral Act.

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

(a)-(3) Conviction of a any crime(s) or act(s) involving fiscal dishonesty, in addition to those crime(s) or act(s) listed in paragraph (2).

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

Note: Authority cited: Sections ~~482, 492, and~~ 481, 7606, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, 7606, and 7691, Business and Professions Code.

**(2) Add Section 1252.1 to Article 6 of Division 12 of Title 16 of the California Code of Regulations to read as follows:**

§ 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.

(a) For the purposes of Section 480(a)(1)(B)(v) of the Business and Professions Code, a financial crime that is classified as a felony, including felony conspiracy or felony attempt to commit that crime, shall be considered to be directly and adversely related to the fiduciary qualifications, functions, or duties of a funeral director if it involves an act of dishonesty, misrepresentation, deceit, fraud, or theft that causes, is intended or expected to cause, or could reasonably be expected to cause, a direct financial benefit to oneself or another or financial harm to another.

(b) For purposes of subdivision (a), financial crimes that are directly and adversely related to the fiduciary qualifications, functions, or duties of a funeral director shall include, but are not limited to, the following:

(1) Crimes under Chapter 4, 6, or 7 of Title 7 of Part 1 of the Penal Code relating to forging, stealing, mutilating, or falsifying judicial or public records or documents; falsifying evidence; bribing, influencing, intimidating, or threatening witnesses; or other offenses against public justice, if intended or expected to cause, or if the crimes could reasonably be expected to cause, a direct financial benefit to oneself or another or financial harm to another.

(2) Crimes under Chapters 9 through 10.5, inclusive, of Title 7 of Part 1 of the Penal Code relating to criminal profiteering, money laundering, fraud, or embezzlement.

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

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

Note: Authority cited: Sections 480 and 7606, Business and Professions Code.  
Reference: Sections 7.5, 480, 7606, 7692, 7692.5, 7693, 7705, and 7708, Business and Professions Code.

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

§ 1253. Rehabilitation Criteria for ~~Rehabilitation~~ Denial of License.

(a) This section applies to all licenses, as defined in Section 23.7 of the Business and Professions Code, that are covered by this division, including, but not limited to, licenses for funeral-related or embalming-related businesses or professions.

(b) When considering the denial of a license ~~an application for a license~~ under Section 480, 7617.1, 7619, 7631, 7643(b), 7662(b), or 7708 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 has been convicted of a crime, the bureau shall consider whether the applicant made a showing of rehabilitation, 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.

(c) 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 subdivision (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 are specified in Section 7617.1, 7619, 7631, 7636(c), 7643(b), 7662(b), 7703, or 7708 of the Business and Professions Code, the bureau shall apply the following criteria in evaluating an applicant's rehabilitation:

(a)-(1) The nature and ~~severity~~ gravity of the crime(s), professional misconduct, or act(s) or crime(s) under consideration as grounds for denial.

(b)-(2) Evidence of any crime(s), professional misconduct, or act(s) committed subsequent to the crime(s), professional misconduct, 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.~~

(c)-(3) The time that has elapsed since commission of the crime(s), professional misconduct, or act(s) or crime(s) referred to in ~~subdivision~~ paragraph (1) or (2).

~~(d)(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 (b)(1) through (5), as applicable.

~~(e)(6)~~ Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: ~~Sections 488, 492 and 481, 482, 7606,~~ Business and Professions Code. Reference: Sections 480, 481, 482, 488, 493, 7617.1, 7619, 7631, 7636, 7643, 7662, 7703, and 7708, Business and Professions Code.

**(4) Amend Section 1253.5 of Title 16 of the California Code of Regulations to read as follows:**

§ 1253.5. ~~Rehabilitation Criteria for Suspensions or Revocations~~ Suspension, Revocation, or Reinstatement of License.

(a) Application of section.

This section applies to all licenses, as defined in Section 23.7 of the Business and Professions Code, that are covered by this division, including, but not limited to, licenses for funeral-related or embalming-related businesses or professions.

(a)(b) Suspension or revocation of a license.

(1) When considering the suspension or revocation of a license on the ground that a ~~licensed funeral establishment, licensed funeral director, or licensed embalmer~~ licensee has been convicted of a crime, the bureau, ~~in evaluating the~~ shall consider whether the licensee made a showing of rehabilitation of such person and his or her eligibility for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the bureau will ~~shall~~ consider 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 licensee'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 licensee has not completed the criminal sentence at issue without a violation of parole or probation, the bureau determines that the licensee did not make the showing of rehabilitation based on the criteria in paragraph (1), the suspension or revocation is based on a disciplinary action taken by another entity, as provided in Section 141 of the Business and Professions Code, for an act substantially related to the practice in which the licensee is licensed, or the suspension or revocation is based on one or more of the grounds other than a criminal conviction that are specified in Section 7636(c), 7665, 7668, 7685.6, 7692, 7692.5, 7693, 7694, 7695, 7696, 7697, 7699, 7700, 7701, 7701.5, 7702, 7703, 7704, 7705, 7706, 7707, 7711.1, 7711.2, 7711.3, or 7739, of the Business and Professions Code, the bureau shall apply the following criteria in evaluating the licensee's rehabilitation:

~~(1)~~(A) Nature and severity gravity of the crime(s) or act(s) or offense(s).

~~(2)~~(B) Total criminal record.

~~(3)~~(C) The time that has elapsed since commission of the crime(s) or act(s) or offense(s).

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

(E) The criteria in paragraph (1)(A) through (E), as applicable.

~~(5)~~(F) If applicable, evidence of expungement dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

~~(6)~~(G) Evidence, if any, of rehabilitation submitted by the licensee.



(b)(c) Petition for Reinstatement.

When considering a petition for reinstatement of a license under this division, 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 ~~Section 1253 of this article~~ subdivision (b)(1) and (2), as applicable.

Note: Authority cited: Sections 481, 482, 7606 and 7740, Business and Professions Code. Reference: Sections ~~480, 481, 482, 488, 493, 7615, 7616, 7636, 7665, 7668, 7685.6, 7686, 7690, 7691, 7692, 7692.5, 7693, 7694, 7695, 7696, 7697, 7699, 7700, 7701, 7701.5, 7702, 7703, 7704, 7705, 7706, 7707, 7708, 7711, 7711.1, 7711.2, 7711.3, 7713.4, 7735, 7736, 7737, and 7738, and 7739~~, Business and Professions Code.