

CONTRACTORS STATE LICENSE BOARD
ORIGINALLY PROPOSED LANGUAGE

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 or Division 1.5 (commencing with Section 475) 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, 493 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 was 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: Sections 480 and 7008, Business and Professions Code.

Reference: Sections 7.5, 480, 7069, 7073, 7090, and 7124, Business and Professions Code; Section 530.55, Penal 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 was convicted of a crime, the Board or Registrar shall consider whether the applicant, licensee, or registrant made a showing of rehabilitation and is presently eligible or fit for a license or registration 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 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 and is presently eligible or fit for a license or registration if, after considering the following criteria and the provisions of subsection (b)(2), the Board or Registrar finds that the individual is rehabilitated:

Denial Based on Felony Convictions Within Seven Years of Application

(A) 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).

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

(B) 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.

Discipline Based on Felony Convictions

(AC) 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.~~

Denial or Discipline Based on Misdemeanor Convictions

(BD) 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.~~

Denial or Discipline Based on Professional Misconduct, Acts, or Omissions

(GE) 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 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~~ a plea of guilty or of nolo contendere, a verdict of guilty, or a conviction having been withdrawn, set aside, or dismissed, and records having been sealed pursuant to Section 1203.4, 1203.4a, ~~or 1203.41, 1203.42, or 1203.425~~ of the Penal Code.

(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 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; Sections 1203.4, 1203.4a, 1203.41, 1203.42, and 1203.425, Penal 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 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 482, 7008, and 7073, Business and Professions Code.
Reference: Sections 480, 482, 485, 486, 496, 7066, 7069, 7073, and 7124, Business and Professions Code.