

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND
GEOLOGISTS**

Proposed Language

(1) Amend section 3060 of Article 5, Division 29, Title 16 of the California Code of Regulations to read as follows:

3060. Substantial Relationship Criteria.

For the purpose of denial, suspension, or revocation of the ~~registration~~ license of a professional geologist, specialty geologist, professional geophysicists, or specialty geophysicists pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a professional geologist, specialty geologist, professional geophysicists, or specialty geophysicists if to a substantial degree it evidences present or potential unfitness of such professional geologist, specialty geologist, professional geophysicist, or specialty geophysicists to perform the functions authorized by his or her registration license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

- (a) Any violation of the provisions of Chapter 12.5 of Division 3 of the Business and Professions Code: or aiding and abetting any person in such a violation.
- (b) A conviction of a crime arising from or in connection with the practice of professional geology or geophysics.

Note: Authority cited: Sections 481 and 7818, Business and Professions Code. Reference: Sections 481, 490, ~~and 493~~, 7860, and 7863, Business and Professions Code.

(2) Amend section 3061 of Article 5, Division 29, Title 16 of the California Code of Regulations to read as follows:

3061. Criteria for ~~Determining Rehabilitation or Appropriate Discipline.~~

(a) When considering the denial of ~~the registration of an application for licensure as a~~ professional geologist, or professional geophysicist, or certification as a specialty geologist, geophysicists or specialty geophysicists, or geologist-in-training under Section 480 of the Code, the ~~B~~board, in evaluating the rehabilitation of the applicant and his or her present eligibility for registration such a license or certification, will consider the following criteria:

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

(2) Evidence of any act(s) committed prior to or subsequent to the 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 Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) 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) Evidence, if any, of rehabilitation submitted by the applicant.

(6) Total criminal record.

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

(b) When considering the suspension or revocation of the ~~registration license~~ of a professional geologist, or specialty geologist, professional geophysicist, or certification of a specialty geologist, specialty geophysicist, or geologist-in-training ~~on the grounds that the registrant has been convicted of a crime or violation of the Geologist and Geophysicist Act, the board or administrative law judge, in evaluating the appropriate level of discipline or rehabilitation of such person and his or her present eligibility for registration will consider the following criteria~~ under Section 490 of the Code, the Board will consider the following criteria in evaluating the rehabilitation of such person and his or her present eligibility to retain his or her license:

(1) Nature and severity of the act(s) or offense(s) under consideration as grounds for suspension or revocation.

(2) ~~Total criminal record.~~ Evidence of any act(s) committed prior to or subsequent to the act(s) or offense(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).

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

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

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

(7) ~~Actual or potential harm to the public, client, or employee.~~ Total criminal record.

(8) ~~Prior disciplinary record.~~

(9) ~~Number and/or variety of current violations.~~

(c) When considering a petition of reinstatement of the ~~registration~~ certification of as a geologist-in-training, specialty geologist, or specialty geophysicist, or the license of a professional geologist, specialty geologist, or professional geophysicist or specialty geophysicist, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b), including but not limited to the following:

(1) Educational courses, including college-level courses, seminars, and continuing professional development courses, completed after the effective date of the Board's decision ordering revocation.

(2) Professional geological or geophysical work done under the responsible charge of a licensee in good standing or under the direction of a person legally authorized to practice.

(3) Payment of restitution to the consumer(s) by the petitioner.

(4) Actual or potential harm to the public, client(s), employer(s), and/or employee(s) caused by the action(s) that led to the revocation or that could be caused by the reinstatement of the certificate, license, or authority.

(5) The criteria specified in subsection (b)(1) through (7), as applicable.

(6) Disciplinary history, other than criminal actions, after the revocation.

(7) Recognition by the petitioner of his or her own actions and/or behavior that led to the revocation.

(8) Correction of the petitioner's actions and/or behavior that led to the revocation.

Note: Authority cited: Section 7818, Business and Professions Code. Reference: Sections 475, 480, 482, 490, and 7862, Business and Professions Code.

(3) Amend section 3064 of Article 5, Division 29 of Title 16 of the California Code of Regulations to read as follows:

3064. Disciplinary Guidelines Orders.

~~In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" (initially published July 1992, republished January 1996, revised June 1998) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation for example: the presence of mitigating factors; the age of the case; evidentiary problems.~~

For violations of Business and Professions Code sections 7860 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code against a professional geologist and/or a professional geophysicist license, the following provisions shall apply to disciplinary orders contained in decisions of the Board:

(a) The minimum disciplinary order shall be reproof. The maximum disciplinary order shall be revocation of the license.

(b) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary order may be stayed by an express condition that the respondent comply with probationary conditions. The minimum time period in which the respondent shall have to comply with the conditions shall be two years. For purposes of this section, this time period shall be known as the "period of probation."

(c) All decisions containing stayed disciplinary orders as described in subdivision (b) shall include the following probationary conditions:

(1) The respondent shall obey all laws and regulations related to the practices of professional geology and geophysics.

(2) The respondent shall submit such special reports as the Board may require.

(3) The period of probation shall be tolled during the time the respondent is practicing exclusively outside the state of California. If, during the period of probation, the respondent practices exclusively outside the state of California, the respondent shall immediately notify the Board in writing.

(4) If the respondent violates the probationary conditions in any respect, the Board, after giving the respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

(5) Upon successful completion of all of the probationary conditions and the expiration of the period of probation, the respondent's license shall be unconditionally restored.

(d) All decisions containing stayed disciplinary orders as described in subdivision (b) may include one or more of the following probationary conditions:

(1) The respondent's license shall be suspended for a period not to exceed two years. If a suspension of the license is ordered, it shall begin on the effective date of the decision.

(2) The respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee. The probationary condition shall include a time period in which this course shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(3) Within 30 days of the effective date of the decision, the respondent shall provide the Board with evidence that he or she has provided all persons or entities with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of professional geology and/or professional geophysics in which the violation occurred with a copy of the decision and order of the Board and shall provide the Board with the name and business address of each person or entity required to be so notified. During the period of probation, the respondent may be required to provide the same notification to each new person or entity with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of professional geology and/or professional geophysics in which the violation occurred and shall report to the Board the name and address of each person or entity so notified.

(4) The respondent shall provide verifiable proof to the Board that restitution has been paid as ordered. The probationary condition shall include a time period in which the

verifiable proof shall be provided to the Board which time period shall be at least 60 days less than the time period ordered for the period of probation.

(e) In addition to the conditions as may be ordered pursuant to subdivisions (c) and/or (d), the following conditions shall be included for the following specific violations:

(1) Incompetency in the practice of professional geology and/or professional geophysics:

(A) The respondent shall successfully complete and pass, with a grade of “C” or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, “college-level course” shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; “college-level course” does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(B) The respondent shall take and achieve the passing score for the Professional Geologist or Professional Geophysicist examination, provided that in the event the respondent holds multiple licenses, the Board shall select the examination in the area of practice of professional geology and/or professional geophysics in which the violation occurred and in the area of professional geology and/or professional geophysics in which the respondent is licensed. The Board or its designee may select the specific examination questions such that the questions relate to the specific area of violation and comprise an examination of the same duration as that required of an applicant for licensure. The respondent shall be required to pay the application and examination fees as described in Section 3005. The probationary condition shall include a time period in which the examination(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(C) During the period of probation, the respondent may practice professional geology and/or professional geophysics only under the review of a professional geologist and/or professional geophysicist licensed in the same branch as the respondent. This person or persons shall be approved in advance by the Board or its designee. Such reviewing professional geologist and/or professional geophysicist shall initial every stamped or sealed document in close proximity to the respondent’s stamp or seal.

(2) Negligence in the practice of professional geology and/or professional geophysics:

(A) The respondent shall successfully complete and pass, with a grade of “C” or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, “college-level course” shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; “college-level course” does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(3) Violation and/or breach of contract in the practice of professional geology and/or professional geophysics:

(A) The respondent shall successfully complete and pass, with a grade of “C” or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, “college-level course” shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; “college-level course” does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

In addition to the disciplinary orders described in this section, all decisions shall address recovery of the Board’s investigation and enforcement costs, as described in and authorized by Business and Professions Code section 125.3.

Notwithstanding this section, non-conforming terms and conditions may be included as part of the disciplinary order, including such other further or lesser action as the Board deems appropriate, in the interest of protecting the public health, safety, and welfare.

Note: Authority cited: Section 7818, Business and Professions Code; ~~and~~ Sections 11400.20 ~~and~~ 11400.21, Government Code. Reference: Sections 125.3, 494, 7860, 7861, 7863 and 7872, Business and Professions Code; ~~and~~ Sections 11400.20, ~~11400.21 and~~ 11415.60, 11425.50(e), ~~and~~ 11519, Government Code.