


BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

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NOTICE OF AVAILABILITY OF MODIFIED TEXT

TITLE 16, CALIFORNIA CODE OF REGULATIONS
DIVISIONS 5 AND 29.5
SECTIONS 416, 418, 3060, AND 3061
CONCERNING SUBSTANTIAL RELATIONSHIP CRITERIA
AND CRITERIA FOR REHABILITATION

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers, Land Surveyors, and Geologists has proposed modifications to the text of Title 16, California Code of Regulations sections 416, 418, 3060, and 3061, relating to the Substantial Relationship Criteria and the Criteria for Rehabilitation. These regulations were originally noticed on March 13, 2020. These proposed modifications were approved by the Board at its March 12, 2020, meeting.

A copy of the modified text is attached. **Any person who wishes to comment on the proposed modifications may do so by submitting written comments between April 30, 2020, and May 15, 2020 to the Contact Person listed below.** Materials regarding this proposal are available on the Board's website at https://www.bpelsg.ca.gov/about_us/rulemaking.shtml or by requesting them from the Contact Person listed below.

Contact Person:	Nancy Eissler, Assistant Executive Officer
Board Name:	Board for Professional Engineers, Land Surveyors, and Geologists
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Please note that any comments should be restricted to the proposed modifications shown in the attached text. The Board is not required to respond to comments received in response to this notice on other aspects of the proposed regulations received in response to this notice. Any comments previously submitted remain in the rulemaking file and will be responded to by the Board's staff as part of the Final Statement of Reasons. All written comments received by May 15, 2020, that pertain to these proposed modifications will be reviewed and responded to by the Board's staff as part of the compilation of the rulemaking file.

This notice is given pursuant to the requirements of Government Code section 11346.8(c) and Title 1, California Code of Regulations section 44.

DATED: April 30, 2020

Original Signed

Nancy A. Eissler, Assistant Executive Officer
 Board for Professional Engineers, Land Surveyors,
 and Geologists

MODIFIED TEXT

Title 16, California Code of Regulations sections 416, 418, 3060, and 3061

Language proposed to be added is shown in double underlined text. Language proposed to be deleted is shown in ~~double strikethrough text~~.

Section 416 of Division 5 of Title 16 of the California Code of Regulations is amended as follows:

416. Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of the certification of an engineer-in-training or a land surveyor-in-training or license of a professional engineer or a land surveyor pursuant to Section 141, ~~or~~ Division 1.5 (commencing with Section 475), subdivision (a) of Section 6775, subdivision (a) of Section 6775.1, Section 6779, subdivision (e) of Section 8780, subdivision (a) of Section 8780.1, or Section 8783 of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions, and duties of a professional engineer or land surveyor if, to a substantial degree, it evidences present or potential unfitness of a professional engineer or land surveyor to perform the functions authorized by his or her 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:~~

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider all of 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 professional engineer or land surveyor.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(a) (1) For ~~engineers-in-training and~~ professional engineers, any violations of the provisions of the Professional Engineers Act or other state or federal laws governing the practice of professional engineering or aiding and abetting any person in such a violation;

(b) (2) For ~~land surveyors-in-training and~~ professional land surveyors, any violations of the provisions of the Professional Land Surveyors' Act or other state or federal laws governing the practice of land surveying or aiding and abetting any person in such a violation;

(e) (3) A conviction of a crime arising from or in connection with the practice of professional engineering or land surveying.

Note: Authority cited: Sections 481, 493, 6716, and 8710, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, 6706.3, 6710, 6732, 6775, 6775.1, 6779, 8780, 8780.1, and 8783, Business and Professions Code.

Section 418 of Division 5 of Title 16 of the California Code of Regulations is amended as follows:

418. Criteria for Rehabilitation.

(a) ~~When considering the denial of an application for certification as an engineer-in-training or a land surveyor-in-training, or for licensure as a professional engineer, or for licensure as a professional land surveyor, or for authority to use the title "structural engineer," or for authority to use the title "geotechnical engineer," under Section 480, Section 6779, or Section 8783 of the 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; the Board will consider the following criteria in evaluating the rehabilitation of the applicant and his or her present eligibility for such a licensure or authority:~~

(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(s) was shortened or lengthened and the reason(s) the period(s) 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 subdivision (a) is inapplicable, or~~ When considering the denial of an application for certification as an engineer-in-training or a land surveyor-in-training, for licensure as a professional engineer or a professional land surveyor, or for authority to use the title "structural engineer" or "geotechnical engineer" under Section 480, Section 6779, or Section 8783 of the Code, if the Board determines that the applicant has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (a) if the denial is based on the ground that the applicant has been convicted of a crime, or, if the denial is based on the ground that the applicant has been subject to formal discipline by another licensing board for professional misconduct, then the Board shall apply the following criteria in evaluating the applicant's rehabilitation. The Board shall find that consider whether the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering by applying the following criteria, the Board finds that the applicant is rehabilitated in evaluating the applicant's rehabilitation:

(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 prior to or subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial which could also be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s), professional misconduct, 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) Any evidence of rehabilitation submitted by the applicant.

(6) Total criminal record.

(7) If applicable, evidence of expungement proceedings that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the applicant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.

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

~~(b) (c) When considering the suspension or revocation of the certification of an engineer-in-training or a land surveyor-in-training, or the license of a professional engineer or a professional land surveyor, or the authority to use the title "structural engineer," or the authority to use the title "geotechnical engineer" under Section 490, subdivision (a) of Section 6775, subdivision (a) of Section 6775.1, Section 6779, subdivision (e) of Section 8780, subdivision (a) of Section 8780.1, or Section 8783 of the Code on the ground that the license holder ~~was~~ has been convicted of a crime, the Board shall consider whether the license holder made a showing of rehabilitation and is presently eligible for a license, if the license holder completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria; 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) 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(s) was shortened or lengthened and the reason(s) the period(s) was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the license holder's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

~~(d) If subdivision (c) is inapplicable, or When considering the suspension or revocation of the certification of an engineer-in-training or a land surveyor-in-training, the license of a professional engineer or a professional land surveyor, or the authority to use the title "structural engineer" or "geotechnical engineer" under Section 490, subdivision (a) of Section 6775, subdivision (a) of Section 6775.1, Section 6779, subdivision (e) of Section 8780, subdivision (a) of Section 8780.1, or Section 8783 of the Code on the ground that the license holder has been convicted of a crime, if the Board determines that the license holder has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (c), then the Board shall apply the following criteria in evaluating the license holder's rehabilitation. The Board shall find that consider whether the license holder made a showing of rehabilitation and is presently eligible for a license if, after considering by applying the following criteria, the~~

Board finds that the license holder is rehabilitated in evaluating the license holder's rehabilitation:

(1) The nature and ~~severity~~ gravity of the ~~act(s) or crime(s)~~ under consideration as grounds for suspension or revocation.

(2) Evidence of any ~~act(s) or crime(s)~~ committed prior to or subsequent to the ~~act(s) or crime(s)~~ under consideration as grounds for suspension or revocation which could also be considered 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 crime(s)~~ referred to in subdivision (1) or (2).

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

(5) Any evidence of rehabilitation submitted by the ~~licensee~~ license holder.

(6) Total criminal record.

(7) If applicable, evidence of expungement proceedings that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the license holder has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.

(8) The criteria in subdivision (c)(1)-(5), as applicable.

~~(c)~~ (e) When considering a petition for reinstatement of the certification of an engineer-in-training or a land surveyor-in-training, ~~or~~ the license of a professional engineer or a professional land surveyor, or the authority to use the title "structural engineer," or ~~the authority to use the title~~ "geotechnical engineer," the Board shall evaluate evidence of rehabilitation submitted by the petitioner, 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 engineering or land surveying work done under the responsible charge of a ~~licensee~~ license holder in good standing or under the ~~direction~~ responsible charge 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)~~ subdivision (d)(1) through (7) (8), 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.

(f) As used in this section, “license” means certification as an engineer-in-training or a land surveyor-in-training, licensure as a professional engineer, licensure as a professional land surveyor, authority to use the title “structural engineer,” or authority to use the title “geotechnical engineer.”

Note: Authority cited: Sections 482, 6716, and 8710, Business and Professions Code. Reference: Sections 480, ~~481~~, 482, ~~488~~, 490, ~~6706.3~~, ~~6710~~, ~~6732~~, 6775, 6775.1, 6777, 6779, ~~6780~~, 8780, 8780.1, 8783, ~~and 8784~~, and 8785, Business and Professions Code; and Section 1203.4, Penal Code.

Section 3060 of Division 29 of Title 16 of the California Code of Regulations is amended as follows:

3060. Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of the certification of a geologist-in-training or registration license of a geologist, specialty geologist, geophysicists, or specialty geophysicists pursuant to Section 141, ~~or~~ Division 1.5 (commencing with Section 475), subdivision (b)(1) of Section 7860, subdivision (a) of Section 7860.1, or Section 7863 of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions, and duties of a geologist, specialty geologist, geophysicists, or specialty geophysicists if to a substantial degree it evidences present or potential unfitness of such geologist or geophysicists to perform the functions authorized by his registration or her 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:

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider all of 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 professional geologist or geophysicist.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(a) (1) Any violation of the provisions of Chapter 12.5 of Division 3 of the Business and Professions Code or other state or federal laws governing the practice of geology or geophysics or aiding and abetting any person in such a violation;

(2) A conviction of a crime arising from or in connection with the practice of geology or geophysics.

Note: Authority cited: Sections 481, 493, and 7818, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, ~~and 7860~~, 7860.1, and 7863, Business and Professions Code.

Section 3061 of Division 29 of Title 16 of the California Code of Regulations is amended as follows:

3061. Criteria for Rehabilitation.

(a) ~~When considering the denial of an application for certification as a geologist-in-training or licensure as a professional geologist, a specialty geologist, or a professional geophysicist, or certification as a specialty geologist, a specialty geophysicist, or geologist-in-training under Section 480 or Section 7863 of the 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: the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for such a license or certification, will consider the following criteria:~~

- (1) The nature and gravity of the crimes(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period(s) was shortened or lengthened and the reason(s) the period(s) 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 subdivision (a) is inapplicable, or~~ When considering the denial of an application for certification as a geologist-in-training or licensure as a professional geologist, specialty geologist, professional geophysicist, or specialty geophysicist under Section 480 or Section 7863 of the Code if the Board determines that the applicant has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (a) if the denial is based on the ground that the applicant has been convicted of a crime, or, if the denial is based on the ground that the applicant has been subject to formal discipline by another licensing board for professional misconduct, then the Board shall apply the following criteria in evaluating the applicant's rehabilitation. The Board shall find that consider whether the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering by applying the following criteria, the Board finds that the applicant is rehabilitated in evaluating the applicant's rehabilitation:

- (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 prior to or subsequent to the act(s), professional misconduct, 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), professional misconduct, 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,~~ Any evidence of rehabilitation submitted by the applicant.

(6) Total criminal record.

(7) If applicable, evidence of expungement proceedings that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the applicant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.

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

~~(b) (c) When considering the suspension or revocation of the certification of a geologist-in-training or the license of a professional geologist, a specialty geologist, or a professional geophysicist, or certification of a specialty geologist, a specialty geophysicist, or geologist-in-training under Section 490, subdivision (b)(1) of Section 7860, subdivision (a) of Section 7860.1, or Section 7863 of the Code on the ground that the license holder was has been convicted of a crime, the Board shall consider whether the license holder made a showing of rehabilitation and is presently eligible for a license, if the license holder completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria; 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) 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(s) was shortened or lengthened and the reason(s) the period(s) was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the license holder's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

~~(d) If subdivision (c) is inapplicable, or~~ When considering the suspension or revocation of the certification of a geologist-in-training or the license of a professional geologist, a specialty geologist, a professional geophysicist, or a specialty geophysicist under Section 490, subdivision (b)(1) of Section 7860, subdivision (a) of Section 7860.1, or Section 7863 of the Code on the ground that the license holder has been convicted of a crime, if the Board determines that the license holder has not completed the criminal sentence at issue without a violation of parole or probation or did not make the showing of rehabilitation based on the criteria in subdivision (c), then the Board shall apply the following criteria in evaluating the license holder's rehabilitation. The Board shall find that consider whether the license holder made a showing of rehabilitation and is presently eligible for a license if, after considering by applying the following criteria, the Board finds that the license holder is rehabilitated in evaluating the license holder's rehabilitation:

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

(2) Evidence of any ~~act(s) or crime(s)~~ committed prior to or subsequent to the ~~act(s) or offense(s) crime(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) crime(s)~~ referred to in subdivision (1) or (2).

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

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

~~(6)~~ (5) Evidence, if any, Any evidence of rehabilitation submitted by the ~~licensee~~ license holder.

~~(7)~~ (6) Total criminal record.

(7) If applicable, evidence that the conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code; evidence that the license holder has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or evidence of a comparable dismissal or expungement.

(8) The criteria in subdivision (c)(1)-(5), as applicable.

~~(e)~~ (e) When considering a petition of reinstatement of the certification as a geologist-in-training, specialty geologist, or specialty geophysicist, or the license of a professional geologist or professional geophysicist, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, 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~~ license holder in good standing or under the ~~direction~~ responsible charge 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)~~ subdivision (d)(1) through (7) (8), 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.

(f) As used in this section, "license" means certification as a geologist-in-training, specialty geologist, or specialty geophysicist or licensure as a professional geologist, a specialty geologist, or a professional geophysicist, or a specialty geophysicist.

Note: Authority cited: ~~Section~~ Sections 482 and 7818, Business and Professions Code.
Reference: Sections ~~475~~, 480, 482, 488, 490, 7860, 7860.1, and 7862, 7863, and 7864,
Business and Professions Code.