



ISSUE MEMORANDUM

DATE	March 17, 2023
TO	Board Members, California State Board of Optometry (CSBO)
FROM	Gregory Pruden, Interim Executive Officer
SUBJECT	Agenda Item #6Bii – Executive Officer’s Report – AB 2138 FAQ

Purpose: To inform Board members, licensees, and applicants about AB 2138 (Chapter 995, Statutes of 2018).

Background:

In 2018, the Legislature enacted AB 2138. A reform bill, it restricts the discretion of boards and bureaus within the Department of Consumer Affairs (DCA) in using prior criminal history as grounds for licensing determinations and established new prohibitions relating to the denial, suspension, and revocation of licensure. The bill prevents programs from using acts involving dishonesty, fraud, or deceit that did not result in a conviction as a basis for the denial of a license and included the adoption of a seven-year limitation on convictions eligible for licensure denial, subject to specific exemptions, and a ban on requiring applicants to self-disclose prior convictions unless the application is made for a license type that does not require a fingerprint background check. The purpose of the bill was to address recidivism rates by removing barriers to licensure and provide greater opportunities for employment.

Issue:

In late 2022, a coalition of organizations that support formerly incarcerated and systems impacted people contacted DCA regarding a review of publicly posted information on boards and bureaus’ websites related to AB 2138. Those organizations noted examples of boards and bureaus they felt had inaccurate information posted on their websites and they asked the Department to ensure that the boards and bureaus displayed accurate and substantive information about AB 2138 on their websites. While CSBO was not referenced whatsoever, staff undertook a review of our website and noted an opportunity existed to produce information for licensees, applicants, and the public. A “CSBO – Conviction or Past Disciplinary Action FAQ” document was created, and reviewed and approved by Legal Counsel. The FAQ has been posted to the Board’s website and distributed via listserv.

Attachments:

1. [AB 2138 – Conviction or Past Disciplinary Action FAQ](#)
2. [AB 2138 Bill language](#)



Applying for Licensure with a Conviction or Past Disciplinary Action? Here's What you Need to Know

Applicants with convictions or disciplinary action on a professional license need to go through some extra steps in the review process when they apply for a license or registration with the Board. This does not necessarily mean that they won't get licensed or registered; many go on to either receive full licensure or registration or are granted a license or registration with certain probationary conditions to ensure public protection.

The reason for the review is that the Board is tasked with the protection of consumers in California. Therefore, the Board has the responsibility to make sure that all licensees and registrants are safe to practice.

1. What types of convictions must I disclose?

You are not required to disclose any information regarding your conviction history. The Board will receive your Criminal Offender Record Information (CORI) from the California Department of Justice.

However, the Board may request additional information from you regarding your conviction history in order to determine if the conviction was substantially related to your profession, or to determine your rehabilitation. Such information may help your case; however, disclosure is voluntary. Whether or not you choose to disclose such information will not be a factor in the decision of whether to issue a license; in the absence of further information from you, the Board will make its decision strictly on the information it has already obtained.

2. If I have a conviction, under what circumstances can my license be denied?

The Board may only deny a license if the applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that conviction, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. There are two exceptions to the seven-year limitation. Convictions for these types of crimes can lead to a denial regardless of age. They are as follows:

- A serious felony conviction. (See [Penal Code Section 1192.7](#))
- A crime for which registration as a sex offender is required pursuant to [Penal Code Section 290\(d\)\(2\) or \(3\)](#) (as effective January 1, 2021).

3. What if my conviction was expunged, or I otherwise have proved rehabilitation?

There are certain circumstances where a conviction cannot be a basis for license denial, even if it occurred within the preceding seven years. They are as follows:

- You have obtained a certificate of rehabilitation under [Chapter 3.5 of Title 6 of Part 3 of the Penal Code](#);
- You have been granted clemency or a pardon by a state or federal executive;
- You have made a showing of rehabilitation under [Business and Professions Code Section 482](#); or
- Your conviction was dismissed under Penal Code Sections [1203.4](#), [1203.4a](#), [1203.41](#), [1203.42](#), or [1203.425](#) (or another state's equivalent). (You may be asked to provide proof of this.)

4. What will not be considered, even if it occurred within the preceding seven years?

- Convictions prior to your 18th birthday, unless you were charged as an adult;
- Charges dismissed under [section 1000.3 of the Penal Code](#);
- Convictions under [sections 11357\(b\), \(c\), \(d\), \(e\)](#) or [section 11360\(b\)](#) of the Health and Safety Code which are two (2) years or older;
- Traffic violations for which a fine of \$500 or less was imposed; or
- Infractions

5. What if I have been arrested, but I wasn't convicted of anything?

The Board is not permitted to deny a license based on an arrest that resulted in an outcome other than a conviction. This includes arrests that resulted in an infraction, a citation, or a juvenile adjudication.

6. If I have formal discipline from another licensing board, under what circumstances can my license be denied?

The Board may only deny a license if the applicant was subject to formal discipline by a licensing board for professional misconduct that was substantially related to the profession within the past seven years.

However, a license cannot be denied based on formal discipline if it was for a conviction that was dismissed pursuant to Penal Code Sections [1203.4](#), [1203.4a](#), [1203.41](#) or [1203.42](#) (or another state's equivalent).

7. What are my rights if my application is denied?

If your application for registration or licensure is denied, the Board must notify you in writing. You have the right to appeal this decision. A denial letter will include the Board's procedure for appealing the denial.

8. Can I see a copy of my conviction history? What if something on my history is incorrect?

The law permits you to request a copy of your complete conviction history from the California Department of Justice (see [Penal Code Sections 11120-11127](#)). You are also permitted to question its accuracy or completeness. Further information can be found online at [Criminal Records - Request Your Own | State of California - Department of Justice - Office of the Attorney General](#).

9. What does “substantially related” mean?

Whenever the Board considers suspending, revoking, or denying, or taking disciplinary action against a license or registration due to a conviction, professional misconduct, or act, it must first determine that the conviction, professional misconduct, or act is substantially related to the qualifications, functions, or duties of the licensed profession.

A conviction or formal disciplinary action is “substantially related” to a profession if to a substantial degree, it evidences present or potential unfitness of the license holder to perform the functions authorized by the license in a manner that is consistent with public health, safety or welfare.

The Board must consider all of the following in making its determination:

- The nature and gravity of the offense;
- The number of years that have elapsed since the date of the offense; and
- The nature and duties of the profession.

These criteria can be found in California Code of Regulations Title 16, [section 1517](#) for Optometry and section [1399.270](#) for Opticianry.

If the Board determines that a crime, professional misconduct, or act is substantially related, it is then required to consider evidence of rehabilitation.

10. What is evidence of rehabilitation?

The Board must always consider evidence of rehabilitation before denying, suspending, or revoking a license. Criteria the Board must consider when evaluating rehabilitation is outlined in [Business and Professions Code Section 482](#), and also California Code of Regulations Title 16, sections [1516](#), [1399.271](#) and [1399.272](#).

11. What type of evidence of rehabilitation should I submit to the Board?

Each person’s case is unique and depends on a variety of factors, including, but not limited to, the nature and gravity of any act, professional misconduct, or conviction, evidence of any subsequent acts, professional misconduct, or conviction and the time period that has elapsed since their occurrence. For these reasons, it could be limiting or misleading to provide a checklist of exactly what is expected in order to demonstrate rehabilitation. Instead, the Board recommends that each applicant reflect on what they have done personally to move forward, make amends, and improve themselves and their community. Common examples of the types of rehabilitation the Board has seen include the following:

- Letters of recommendation (from a supervisor, volunteer organization, pastor, colleague, etc.)
- Evidence of community service
- Evidence of participation in a support group
- Evidence of participation in a rehabilitation program (i.e. Alcoholics Anonymous) (if applicable)
- Evidence of completion of subsequent coursework or degree programs
- Evidence of participating in psychotherapy

12. If I send documents related to my case to the Board, how do I know that they were received?

If you want confirmation that any documents you sent were received, send documents using a delivery system which allows you to track delivery (i.e., certified mail, express or overnight mail delivery service).

13. Is there anything I can do to expedite the conviction review process because I have a job offer which requires a license or because I will lose my job unless I obtain a license?

This situation occurs frequently. However, in order to be fair to all applicants, the Board reviews each case in the order it was received. The time to review each case is based upon the number of documents obtained for each conviction and varies with each case.

Responding promptly and completely to Board inquiries will help the review process move smoothly.