

## Professional Fiduciaries Bureau

### INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Substantial Relationship and Rehabilitation Criteria Regulations

Section(s) Affected: Sections 4520, 4521, 4522, 4620 and 4622 of Division 41 of Title 16 of the California Code of Regulations (CCR).

#### Background and Statement of the Problem:

The Professional Fiduciary Bureau (Bureau) enforces the Professional Fiduciaries Act (Chapter 6500 (commencing with section 6500) of Division 3 of the Business and Professions Code) (Act) and oversees guardians, conservators, trustees, and other types of fiduciaries.

In accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), by July 1, 2020, BPC section 481 will require the Bureau to develop criteria, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions it regulates. Further, BPC section 493 will require the Bureau to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates by using criteria including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession. The substantial relationship requirement stems from the due process principle that a statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448; *Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.)

In addition, BPC section 482 will require the Bureau to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. In the context of professional licensing decisions, the courts have said that, “[r]ehabilitation . . . is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058, internal punctuation omitted.) Additionally, the Legislature’s “clear intent” in enacting AB 2138 was “to reduce licensing and employment barriers for people who are rehabilitated.” (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.)

CCR section 4520 establishes the criteria for determining when a crime, professional misconduct and act is substantially related to the qualifications, functions and duties of a

professional fiduciary.

CCR section 4521 establishes the criteria in determining if certain financial crimes are directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary.

CCR section 4522 establishes the criteria for determining rehabilitation of an applicant or licensee when considering denial of a license on the ground of a criminal conviction.

CCR Section 4620 expands the existing regulation to include the use of substantially related acts that are the basis of out of state discipline as substantially related acts. It would also establish the substantial relationship criteria for crimes and acts.

CCR section 4622 establishes the criteria for determining the rehabilitation of a licensee when considering suspension or revocation of a license on the ground of a criminal conviction and substantially related acts.

As required under AB 2138, the Bureau proposes to amend sections 4520, 4522, 4620 and 4622, and add section 4521 of article 6 of division 41 of title 16 of the CCR to adhere to these mandates and revise its substantial relationship and rehabilitation criteria.

Specific Purpose, anticipated benefit and rationale:

Amend Section 4520 of Article 6 of Division 41 of Title 16 of the CCR (Substantial Relationship Criteria)

a. Add Section 4520, subsection (a)

Purpose: The purpose of amending CCR section 4520 by adding subsection (a) is to expand the regulation to include substantially related “professional misconduct,” since the Bureau may consider such misconduct in denying licenses under BPC section 480. The subsection would be amended to reword and move to subsection (c) the phrase, “[s]uch crimes or acts shall include but not be limited to those involving the following.”

Anticipated Benefit: The proposed revisions to section 4520, subsection (a) would provide clarity to license applicants and licensees that the Bureau is statutorily authorized to deny a license on the basis of professional misconduct and discipline in an out-of-state jurisdiction. The proposal would also make aware relevant parties to any administrative appeal arising from a licensing decision (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent’s counsel) that when disciplining applicants or licensees for a criminal conviction, the Bureau is required to determine whether the act is substantially related to the qualifications,

functions, or duties of a professional fiduciary by using the listed criteria.

Rationale: BPC section 480 authorizes the Bureau to deny a license application on the basis of substantially related formal discipline by a licensing Bureau in or outside of California. The regulation seeks to implement, interpret, and make specific BPC section 480 by adding their relative provisions to the Bureau's substantial relationship criteria regulation. Accordingly, the proposal is necessary to provide the appropriate notice to license applicants that discipline in an out-of-state jurisdiction and professional misconduct are grounds for license denial and implement the requirements of BPC section 480.

b. Add Section 4520, subsection (b)

Purpose: The purpose of adding CCR section 4520, subsection (b) is to implement AB 2138 and BPC section 481, which requires each board or bureau to develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions regulated by that board or bureau.

Anticipated Benefit: The proposed revisions to section 4520, subsection (b) would provide clarity and transparency to license applicants and licensees by listing the specific criteria the Bureau must consider when making the substantial relationship determinations applicable to criminal convictions. The proposal would also make aware relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) of the specific criteria used by the Bureau to determine whether a criminal conviction is substantially related to the duties and functions of a professional fiduciary.

Rationale: BPC section 480 presently authorizes the Bureau to deny an application for licensure based on a conviction for a crime or act substantially related to the licensed business or profession. (BPC, section 480, subd. (a)(3).) BPC section 481 requires the Bureau to develop criteria to help evaluate whether a crime was substantially related to the regulated business or profession, and the Bureau established the criteria via regulations.

The Legislature's clear intent in enacting AB 2138 was to reduce licensing and employment barriers for people who are rehabilitated. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1135.) Accordingly, in AB 2138, the Legislature amended BPC section 480 to limit boards' and bureaus' ability to use prior convictions or acts when denying licenses. Beginning July 1, 2020, boards may not deny a license to an applicant because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or

expunged. (BPC, section 480, subs. (b) & (c), as added by AB 2138, section 4.)

Absent these circumstances, AB 2138 will permit boards and bureaus to deny a license when an applicant has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession, and one of the following conditions exist:

- 1) the conviction occurred within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of a specified business or profession regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau;
- 2) the applicant is presently incarcerated for the crime; or
- 3) the applicant was released from incarceration for the crime within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of specified businesses or professions regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau.

AB 2138 also specified three criteria that boards and bureaus must consider when evaluating whether a crime is “substantially related” to the regulated business or profession. The criteria “shall include all of the following: (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 profession in which the applicant seeks licensure or in which the licensee is licensed.” (BPC, section 481, subd. (b), as added by AB 2138, section 7; see also BPC, section 493, subd. (b), as added by AB 2138, section 13.) Accordingly, the proposed regulation lists each of these criteria for the Bureau to consider when making the substantial relationship determination. This proposed addition is necessary to conform the regulation to statute, and to consolidate the Bureau’s substantial relationship criteria in one place. The proposal is also necessary to consolidate into one regulation the criteria the Bureau will apply in evaluating whether a crime or other misconduct is substantially related to the licensed profession.

c. Add Section 4520, subsection (c)

Purpose: The purpose of adding CCR section 4520, subsection (c) is to clarify that crimes or professional misconduct that are substantially related to the qualifications, functions, or duties of a professional fiduciary include, but are not limited to, a conviction of crimes related to and/or involving domestic abuse, elder abuse, or child abuse, sex crimes and/or crimes in which registration as a sex offender is required, assault and/or battery, driving under the influence of drugs or alcohol, the financial crimes proposed to be listed in CCR section 4521, as discussed in this Initial Statement of Reasons under the heading “Add CCR Section 4521 of Article 6 of Division 41 of Title 16 of CCR (Direct and Adverse Relationship of Certain Financial Crimes),” below, and crimes related to and/or involving human trafficking, false imprisonment, kidnapping, extortion, murder or attempt thereof, or terrorism. The listing of crimes and/or professional misconduct is not restricted to the definitions of the California Penal Code in order to include violations of other state or federal laws governing professional fiduciaries.

Anticipated Benefit: The proposed revisions to section 4520, subsection (c) would provide clarity to license applicants and licensees of the specific crimes and professional misconduct that are substantially related to the qualifications, functions, or duties of a professional fiduciary. The proposal would also make aware relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent’s counsel) that substantially related crimes and professional misconduct include the crimes listed in subsection (c).

Rationale: The current regulation does not provide any listing of crimes or professional misconduct that are substantially related to the qualifications, functions or duties of a professional fiduciary. By listing those crimes, the proposal would clarify to licensees and the public which crimes or professional misconduct are considered substantially related to the qualifications, functions, or duties of a professional fiduciary. Not including this amendment may result in the Bureau being unable to deny licenses to applicants, especially if the latter manage to persuade an Administrative Law Judge that the act in question is not substantially related to the qualifications, functions, or duties of a professional fiduciary since it is not specifically listed. In addition, inclusion of such list would be necessary to protect the consumer and to deter licensees from engaging in such conduct.

The listed crimes and professional misconduct would involve the following, for the following reasons:

Abuse, murder, kidnapping, or false imprisonment: Crimes and professional misconduct involving abuse, murder, kidnapping, or false imprisonment, including a conviction of crimes related to and/or involving domestic abuse, elder abuse, or child abuse, sex

crimes and/or crimes in which registration as a sex offender is required, assault and/or battery, or terrorism, are substantially related to the qualifications, functions, or duties of a professional fiduciary because these crimes demonstrate an extreme disregard for the basic physical or emotional needs and well-being of another, and even their fundamental human rights. In order to act “on behalf of other persons or their estates” (Ch. 491, Stats. 2006, § 2(c)), a professional fiduciary must be able to put themselves in another’s place: “a trust must be administered in accordance with the intentions of the settlor” (*In re Ferrall’s Estate* (1953) 41 Cal.2d 166; see *In re Canfield’s Estate* (1947) 80 Cal.App.2d 443; PROB, §§ 16000 & 21102); “[a] guardian stands in place of the parent” (*Guardianship of Howard* (1933) 218 Cal. 607, 610; see PROB §§ 2108, 2353, & 6241); an agent under durable power of attorney is “accord[ed] ... the same rights and privileges that would be accorded the principal if the principal were personally present and seeking to act” (PROB, § 4300; see also PROB, §§ 4051, 4684, & 4688; CIV, § 2304, 2316, & 2319); and “the paramount concern in construing a will is to determine the subjective intent of the testator” (*Estate of Duke* (2015) 61 Cal.4th 871, 875; see PROB, § 21102(a)). The Legislature has enacted various laws to enable fiduciaries and others to ascertain a consumer’s desires (e.g., PROB, §§ 2580, 2583, 4235, 4690, & 21101 et seq.), and the Bureau requires a licensee, when making decisions on behalf of a conservatee, ward, or principal who lacks capacity, to use “every reasonable good faith effort to ascertain the desires of the consumer.” (16 CCR §§ 4472(c), 4478, & 4480.) In addition, the Legislature has established safeguards to prevent abuse or other attacks on a consumer’s autonomy by establishing an order of preference for the appointment of a conservator, with priority given to the preference of the conservatee, and limiting who may petition for appointment of a conservator (PROB, §§ 1810, 1812, & 1820); authorizing removal of a guardian or conservator for “[g]ross immorality” (PROB, § 2650); establishing a presumption “that the personal residence of [a] conservatee ... is the least restrictive appropriate residence for the conservatee” (PROB, § 2352 & 2352.5); requiring advance permission before a ward or conservatee is moved outside of the state (PROB, § 2352); prohibiting placement of a ward or conservatee “in a mental health treatment facility under [the Guardianship-Conservatorship Law (Division 4 (commencing with section 1400) of the Probate Code)] against his or her will” and authorizing removal of a guardian or conservator for doing so (PROB, §§ 2356, 2650(g)); prohibiting an agent under durable power of attorney from consenting to or carrying out, among others, “[c]ommitment to or placement in a mental health treatment facility,” mercy killing, assisted suicide, or euthanasia under the Health Care Decisions Law (Division 4.7 (commencing with section 4600) of the Probate Code) (PROB, § 4652); and defining “abuse of an elder or dependent adult,” for purposes of the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code), to include physical abuse, isolation, and abduction, with “isolation” defined to include false imprisonment or physical restraint of an elder or dependent adult, as provided (WIC, § 15610.43(a)(3) & (4)). (See also 16 CCR § 4484 [prohibiting a licensee from “oppos[ing] or interfer[ing] with efforts to terminate the licensee’s fiduciary relationship

with a consumer for any reason other than as necessary or appropriate to protect or promote the best interest of that consumer”].) A person who has been convicted of a crime involving abuse, murder, kidnapping, or false imprisonment has demonstrated a likelihood that they would disregard or misinterpret a consumer’s needs, resulting in the specific types of misconduct that the above-cited laws are designed to prevent.

Undue influence, intimidation, coercion, or extortion: Crimes or professional misconduct involving undue influence, intimidation, coercion, or extortion, including a conviction of crimes related to sex crimes and/or crimes in which registration as a sex offender is required, elder abuse, human trafficking, kidnapping, extortion, and terrorism, are substantially related to the qualifications, functions, or duties of a professional fiduciary because an applicant who has committed those crimes has demonstrated a capacity to exert undue influence over another in their own self-interest or in circumstances that harm another. A professional fiduciary has unique opportunity to abuse their status to exert undue influence in their fiduciary relationship with a beneficiary (in the case of a trustee or the personal representative of a decedent’s estate), ward or conservatee (in the case of a guardian or conservator), or principal (in the case of an agent under durable power of attorney), who is often especially vulnerable to undue influence, as they may be “unable to provide properly for their personal needs, manage their financial resources, or resist fraud or undue influence as well as fiscal, emotional and physical harm.” (Ch. 491, Stats. 2006, § 2(b); see also PROB, §§ 1801 & 1821(a)(5).) Recognizing the potential for abuse inherent in a fiduciary relationship, in which the fiduciary “is in a superior position to exert unique influence over the dependent party” (*Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 271), the Legislature has enacted laws to protect consumers from abuse of the fiduciary relationship by, among other things, creating a presumption that any transaction between a trustee, guardian, or conservator and the consumer by which the trustee, guardian, or conservator “obtains an advantage” is a violation of fiduciary duties (PROB, §§ 2101 & 16004(c); see also PROB, § 4051; CIV, § 2322(c)); prohibiting a guardian or conservator from “hir[ing] or refer[ring] any business to an entity in which he or she has a financial interest except upon authorization of the court” (PROB, § 2351); and authorizing increased penalties against a person who has “in bad faith wrongfully taken, concealed, or disposed of the property [belonging to a conservatee, a minor, an elder, a dependent adult, a trust, or the estate of a decedent] by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse” (PROB, § 859; 4231.5(c); see also *Vale v. Union Bank* (1979) 88 Cal.App.3d 330 (“Exemplary damages may be awarded against a trustee who breaches [their] fiduciary duties where there is evidence of oppression, fraud, or malice.”)); and making “status as a fiduciary” evidence of “[t]he influencer’s apparent authority” when determining whether a person has committed financial abuse of an elder or dependent adult within the meaning of the Elder Abuse and Dependent Adult Civil Protection Act (WIC, §§ 15610.30(a)(3) & 15610.70). A person who has been convicted of a crime involving undue influence, intimidation, coercion, or extortion has demonstrated a likelihood that

they would abuse their status as a professional fiduciary by engaging in the specific types of misconduct that the above-cited laws are designed to prevent.

Reckless endangerment: Crimes or professional misconduct involving reckless endangerment of others, including driving under the influence of drugs or alcohol, are substantially related to the qualifications, functions, or duties of a professional fiduciary due to the unique hazards of negligence or recklessness in the profession. The Legislature has recognized these hazards by authorizing the Bureau to deny, suspend, or revoke a license for “gross negligence or incompetence in practice” (BPC, § 6584); authorizing removal of a trustee who does not “administer the trust with reasonable care, skill, and caution,” as provided (BPC, § 16040(a), 16047(a), & 16420(a)(5)), a guardian or conservator who “[f]ail[s] to use ordinary care and diligence in the management of the estate” (PROB, § 2650; see also PROB, §§ 2401 & 2401.3), an agent under durable power of attorney who fails, “in dealing with the property of the principal, [to] observe the standard of care that would be observed by a prudent person,” as provided (PROB, § 4231 & 4541(d)(1)), and a personal representative who has “wrongfully neglected the estate, or has long neglected to perform any act as personal representative” (PROB, § 8502); making a trustee, guardian or conservator, or personal representative liable for a breach of trust or fiduciary duty that they negligently enabled a second trustee, guardian or conservator, or personal representative to commit (PROB, §§ 9631(b)(4), 2105.5(b)(4), 16402(b)(4)); and defining “abuse of an elder or a dependent adult,” for purposes of the Elder Abuse and Dependent Adult Civil Protection Act, to include “neglect,” including “[t]he negligent failure of any person having the care or custody of an elder or a dependent adult,” which may include a conservator or agent under durable power of attorney (PROB, § 2351(a) & 4123(c)), “to exercise that degree of care that a reasonable person in a like position would exercise,” and “abandonment,” including “the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person,” as provided. (WIC, §§ 15610.05, 15610.07(a)(1), & 15610.57(a)(1) [emphasis added].) In addition, because the faithful management of ward or conservatee’s estate, or distribution of a decedent’s estate, depends on timely compliance with various reporting provisions, the Legislature has authorized denial, suspension, or revocation of a license for “failure to comply with, or to pay a monetary sanction imposed by a court for failure to provide timely reports” (BPC, § 6584(e); see also BPC, § 6584(h)); removal of a guardian or conservator for “fail[ing] to file an inventory and appraisal,” as provided (BPC, § 2614.5(b) & 2615); and removal of a personal representative for “refus[ing] or negligently fail[ing] to file an inventory and appraisal,” as provided (BPC, § 8804). “[D]riving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy.” (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.) A person who recklessly endangers others by driving under the influence of drugs or alcohol has demonstrated a likelihood that they will neglect or endanger consumers as a professional fiduciary by engaging in the specific types of misconduct that the above-cited laws were designed to prevent: “In relation to multiple convictions involving driving and alcohol consumption,

we reject the argument that a physician can seal off or compartmentalize personal conduct so it does not affect the physician's professional practice.” (*Id.*)

Financial crimes listed in CCR section 4521, added by the proposed regulation, are substantially related to the qualifications, functions, or duties of a professional fiduciary for the reasons discussed in this Initial Statement of Reasons under the heading “Add CCR Section 4521 of Article 6 of Division 41 of Title 16 of CCR (Direct and Adverse Relationship of Certain Financial Crimes),” below.

Add CCR Section 4521 of Article 6 of Division 41 of Title 16 of CCR (Direct and Adverse Relationship of Certain Financial Crimes)

Purpose: The purpose of adding 16 CCR section 4521 is to implement AB 2138, adding BPC section 480(a)(1)(B)(ii), which, beginning July 1, 2020, will require the Bureau to adopt regulations to aid in determining, if an applicant was convicted of a felony financial crime, whether the crime is directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary and therefore excluded from the statute of limitations, effective July 1, 2020, that, with certain exceptions, prevents the Bureau from denying a license based on a criminal conviction if the applicant was convicted or, if incarcerated, released from incarceration, more than seven years before the application date. (BPC, § 480, subd. (a)(1)(B)(ii), as added by AB 2138, § 4.)

A professional fiduciary has the following fiduciary duties in the respective roles, specified in BPC section 6501, subdivision (f), of trustee, guardian or conservator, agent under durable power of attorney, or personal representative of a decedent’s estate:

Trustee: Among other duties (see, generally, PROB, § 16000 et seq.), a trustee has a duty of “utmost good faith” to beneficiaries (*Allen v. Meyers* (1936) 5 Cal.2d 311, 315; see PROB, § 16081(a)); a duty of loyalty, including to “administer the trust solely in the interest of the beneficiar[y]” and not to administer another trust adverse to that interest (PROB, §§ 16002(a) & 16005; see also PROB, § 16003); a duty against self-dealing, including “not to use or deal with trust property for the trustee’s own profit or for any purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary” (PROB, § 16004; see also PROB, § 21380); a duty of disclosure of material facts necessary to protect a beneficiary’s interest, including “to keep the beneficiaries of the trust reasonably informed of the trust and its administration” (PROB, § 16060; see *Strauss v. Superior Court In and For Los Angeles County* (1950) 36 Cal.2d 396, 401-402.); and a duty to “preserve trust property and make it productive” (*Moeller v. Superior Court* (1997) 16 Cal. 4th 1124, 1132; see, e.g., PROB, §§ 16006-16007, 16046). If a trust is revocable, the “beneficiary” is generally the settlor or other person holding the power to revoke. (PROB, §§ 15800-15803; see *Estate of Girdalin* (2012) 55 Cal.4th 1058, 1067.) “Except to the extent that

the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.” (PROB, § 15002.)

**Guardian or conservator:** Guardians and conservators are generally subject to the law of trusts. (PROB, § 2101.) As such, they share a trustee’s above-described fiduciary duties. (See *Conservatorship of Lefkowitz* (1996) 50 Cal.App.4th 1310, 1313-1314.) These include the duty of good faith (*Poag v. Winston* (1987) 195 Cal.App.3d 1161, 1176); the duty of loyalty (see, e.g., PROB, §§ 2351(a) & 2420); the duty against self-dealing (see, e.g., PROB, §§ 2351(d), 2401(c)-(d), 2650(f), & 21380); the duty of disclosure (see, e.g., PROB, §§ 1513, 1513.2, 2610, 2614.5, 2615, 2620, & 2650(b)); and the duty to preserve trust property and make it productive (see *Conservatorship of Coffey* (1986) 186 Cal.App.3d 1431, 1439-1440; and *Conservatorship of Pelton* (1982) 132 Cal.App.3d 496, 501-502).

**Agent under durable power of attorney:** An agent under durable power of attorney is generally subject to the law of agency. (PROB, § 4051; CIV, § 2400.) An agent under durable power of attorney has a duty of good faith (*Whittaker v. Otto* (1961) 188 Cal.App.2d 619, 624; PROB, § 4231.5(c); CIV, § 2306); a duty of loyalty and a duty against self-dealing, including “to act solely in the interest of the principal and avoid conflicts of interest” (PROB, § 4232; see also CIV, § 2322(c); PROB, §§ 16002(a), 16004, 16005, & 21380; and *Langford v. Thomas* (1926) 200 Cal. 192, 197); and a duty of disclosure, including, “[t]o the extent reasonably practicable under the circumstances, ... to keep in regular contact with the principal, to communicate with the principal, and to follow the instructions of the principal” (PROB, § 4234; see also BPC, § 6560); and a duty to preserve the principal’s property and make it productive to the extent that a “prudent person dealing with the property of another” would (PROB, § 4231; compare PROB, § 3912(a)(3) & (b)).

**Personal representative of a decedent’s estate:** A personal representative “occupies a fiduciary relation toward all parties having an interest in the estate.” (*Estate of Sanders* (1985) 40 Cal.3d 607, 616.) The personal representative has a duty of good faith, a duty against self-dealing, and a duty of disclosure. (*Id.*; see also PROB, §§ 8110(a), 8502(a), 8800, 8804, 8850, 8852, 9050, 9053, & 21380; *Jorgensen v. Jorgensen* (1948) 32 Cal.2d 13, 20; and *Purinton v. Dyson* (1937) 8 Cal.2d 322, 326.) The “primary duty” of the personal representative of a decedent’s estate, defined in PROB section 58 to include an executor, administrator, or similar authority, is to “ ‘preserve and protect the assets until distribution.’ ” (*Estate of Kampen* (2011) 201 Cal.App.4th 971, 989.) However, a personal representative does not necessarily have the duty to make estate assets productive. (See *Estate of Beach* (1975) 15 Cal.3d 623, 639; and *In re Auslander’s Estate* (1960) 53 Cal.2d 615, 627.)

If a fiduciary breaches a fiduciary duty in the management of property for a beneficiary (e.g., PROB, § 2420), or in connection with the care, custody, control, or education of a

beneficiary (e.g., PROB, § 2351), the fiduciary is generally chargeable for damages in the amount of the loss of value, the loss of potential gain in value, or the profit gained by the fiduciary as a result of the breach of duty. (See PROB, §§ 2401.3, 4231.5, 9601, 16420(a)(8), & 16440; see also PROB, § 15003(c); CIV, § 1573; *Salahutdin v. Valley of California* (1994) 24 Cal.App.4th 555, 564-565; *Stevens v. Torregano* (1961) 192 Cal.App.2d 105, 122-123; and *Tracy v. Muir* (1907) 151 Cal. 363, 372-373.) “Exemplary damages may be awarded against a trustee who breaches [their] fiduciary duties where there is evidence of oppression, fraud or malice.” (*Vale v. Union Bank* (1979) 88 Cal.App.3d 330; see PROB, §§ 859, 2401.7, 4231.5(c), 9603, 16420(b), 16442, & 15003(b); PEN, §§ 506 & 515; and WIC, §§ 15610.30(a)(3), 15610.57, 15610.70(a)(2), 15657, & 15657.5.)

Pursuant to BPC section 480(a)(1)(B)(ii), as in effect beginning July 1, 2020, the proposed regulation would provide that a financial crime that is classified as a felony, including felony conspiracy or felony attempt to commit that crime, is directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary if the crime involves dishonesty, fraud, deceit, or theft that resulted in or could have resulted in either: (1) direct financial benefit to the applicant or another person, estate, or trust; or (2) direct financial harm to another person, estate, or trust. The proposed regulation would also enumerate, in 16 CCR section 4521, subdivisions (a), (b), and (c), specific felony financial crimes that the Bureau has determined are directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary. The proposed provisions of 16 CCR section 4521 would enable the Bureau to exclude an applicant who has been convicted of such crimes from licensure notwithstanding the seven-year statute of limitations described above.

Anticipated Benefit: The proposed addition of 16 CCR section 4521 would enhance consumer protection, as the Bureau would be allowed to deny licensure to those individuals with an inclination to financially take advantage of those under their care notwithstanding the seven-year statute of limitations described under the heading “Purpose,” above. In addition, the proposed regulation would provide clarity and transparency to applicants and licensees by (1) specifying the criteria the Bureau will consider to determine whether a felony financial crime is directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary, and may therefore be considered as grounds for denial of a license notwithstanding the seven-year statute of limitations described under the heading “Purpose,” above; and (2) enumerating specific felony financial crimes that are directly and adversely related. The proposal would also make aware relevant parties to any administrative appeal arising from a licensing denial based on the applicant’s conviction of, or incarceration for, a felony financial crime more than seven years before the application date (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent’s counsel) that the Bureau is required to determine that the crime is directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary

using the specified criteria, or the crime must be enumerated in 16 CCR section 4521, subdivision (a), (b), or (c).

Rationale: Historically, the Bureau has seen a large number of cases of licensees taking financial advantage of those under their care via fraud, embezzlement, or theft. Without a proper criteria to determine whether a financial crime is directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary, the Bureau may not be able to deny an application for a related financial criminal conviction, or incarceration for that conviction, that falls outside of the seven-year statute of limitations described under the heading "Purpose," above. Therefore, this section is necessary to provide protection to consumers by the Bureau not licensing a person who may cause additional financial harm to the public.

The specified criteria would require the Bureau to consider a crime to be directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary if the crime involves dishonesty, fraud, deceit, or theft that resulted in or could have resulted in either: (1) direct financial benefit to the applicant or another person, estate, or trust; or (2) direct financial harm to another person, estate, or trust.

Accordingly, the specific crimes listed in 16 CCR section 4521, subdivisions (a) and (b) involve acts of dishonesty, fraud, or deceit (crimes involving the acquisition or provision of false, altered, forged, counterfeit, or fraudulent statements or documents, or involving money laundering, fraud, identity theft, or obtaining money, labor, or property under false pretenses) or theft (crimes involving stolen property, embezzlement, theft, grand theft, larceny, burglary, or identity theft).

A crime that meets these criteria, including the listed crimes, would be directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary for the following reasons:

Duty of good faith & duty of disclosure: An applicant who has committed a crime involving the acquisition or provision of false, altered, forged, counterfeit, or fraudulent statements or documents, or involving money laundering, fraud, identity theft, or obtaining money, labor, or property under false pretenses, has demonstrated a capacity to dissemble in the interest of financial gain or under circumstances that cause financial harm to another, in direct and adverse relation to the fiduciary duty of good faith and the disclosure of material facts, and the various above-described state laws that codify those duties of a professional fiduciary, which provide safeguards and oversight to ensure that, for example, a guardian acts in their ward's best interest and not their own (see PROB, §§ 1513, 1513.2, 2610, 2614.5, 2615, 2620, & 2650(b)), or that a personal representative does not enrich themselves by "conceal[ing] from the [probate] court the existence of certain heirs or fail[ing] to account for some of the assets of the estate, at the same time neglecting to give proper notice to the interested parties." (*Larrabee v. Tracy* (1943) 21 Cal.2d 654, 651.)

Duty of loyalty & duty against self-dealing: Penal Code section 503 defines “embezzlement” as “the fraudulent appropriation of property by a person to whom it has been intrusted.” An applicant who has committed a crime involving embezzlement has demonstrated a capacity to abuse another person’s trust and misappropriate their assets in the interest of financial gain or under circumstances that cause financial harm to another, in direct and adverse relation to the duty of loyalty and duty against self-dealing, and the various state laws that codify those duties, which provide safeguards and oversight to, among other things, prevent “the neglect or the physical, emotional or financial abuse of the vulnerable clients that professional fiduciaries are supposed to serve.” (Ch. 491, Stats. 2006, § 2(d).) The Legislature enacted the Act in response the state’s growing population of “people 65 years of age or older,” and, therefore, the “increasing number of people in the state [who] are unable to provide properly for their personal needs, manage their financial resources, or resist fraud or undue influence as well as fiscal, emotional and physical harm.” (Ch. 491, Stats. 2006, § 2(a) & (b); see *Barbara A. v. John G.* (1983) 145 Cal.App.3d 369, 383 [“The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party.”].) In addition to enacting the Act, the Legislature has recognized the particular vulnerability of a conservatee or principal to financial abuse by listing “status as a fiduciary” as evidence of “undue influence” by which a person or entity may “take[], secrete[], appropriate[], obtain[], or retain[], or assist[] in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult” in violation of the Elder Abuse and Dependent Adult Civil Protection Act, and by providing additional damages if an attorney-in-fact (including an agent under durable power of attorney) “has in bad faith wrongfully taken, concealed, or disposed of property that belongs to a principal under a power of attorney, or had taken, concealed, or disposed of property that belongs to a principal under power of attorney by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse[.]” (WIC, § 15657.5; PROB, § 4231.5(c).) The capacity to abuse another person’s trust and misappropriate their assets in the interest of financial gain or under circumstances that cause financial harm to another, evidenced by an applicant’s having committed a crime involving embezzlement, is a characteristic shared by fiduciaries who would exploit their legal status in ways that the Act and other laws described above were enacted to prevent, and is therefore directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary.

Duty to preserve property: An applicant who has committed crimes involving stolen property, embezzlement, theft, grand theft, larceny, burglary, or identity theft has demonstrated a disregard for others’ property that may contribute to negligence, recklessness, or worse in the management of a trust, the property of a ward, conservatee, or principal, or an estate, in direct and adverse relation to the fiduciary

duty to preserve property. Disregard for others' possessions would make a fiduciary more likely, as trustee, to "fail[] or decline[] to act" (PROB, § 15642(b)(4)) to "keep control of and to preserve the trust property" (PROB, § 16006) or "make the trust property productive" (PROB, § 16007); as guardian or conservator, to fail to file an accurate inventory and appraisal of the estate (PROB, §§ 2610 et seq. & 2650(b)) or "fail[] to use ordinary care and diligence in the management of the estate" (PROB, §§ 2401(a), 2650(a)); as agent under durable power of attorney, to fail, "in dealing with the property of the principal, [to] observe the standard of care that would be observed by a prudent person dealing with the property of another" (PROB, § 4231(a)); or as personal representative of a decedent's estate, to fail to identify "ascertainable" heirs and creditors of the decedent (PROB, §§ 8110(a), 9050, & 9053), to fail to file an accurate inventory and appraisal of the estate (PROB, §§ 8800, 8804, 8850, & 8852), or to "waste[], embezzle[], mismanage[]," or "wrongfully neglect[]" the estate (PROB, § 8502(a) & (c)). Because disregard for others' possessions creates an increased likelihood that an applicant will violate of the fiduciary duty to preserve property, as embodied in the above-cited laws, the above-described crimes involving theft are directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary.

Amend CCR Section 4522 of Article 6 of Division 41 of Title 16 of CCR (Rehabilitation Criteria)

a. Add CCR Section 4522 Subsection (a) of Title 16 of the CCR

Purpose: The purpose of adding CCR Section 4522, subsection (a) is to comply with the requirements of AB 2138, section 9, and BPC section 482, subdivision (b)(1), which requires the Bureau to consider whether an applicant has made a showing of rehabilitation if the applicant has completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also provides a specific list of criteria for the Bureau to consider for these applicants. The list of criteria is narrow in scope and limited to considerations relevant to the crime and the criminal sentence, since AB 2138 requires the Bureau to consider rehabilitation in the narrow context of an applicant who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards and bureaus under the Department of Consumer Affairs (DCA).

Anticipated Benefit: The proposed revisions to CCR section 4522, subsection (a) would provide transparency and clarity to license applicants who have completed their criminal sentence without a violation of parole or probation. Providing the narrow list of rehabilitation criteria would help license applicants understand the facts and documents to present to the Bureau to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal arising from a license denial (e.g.,

the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, applicants who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria applicable to the applicant.

Rationale: Existing law required boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying or disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC, section 482.) A board may not deny an applicant a license based solely on a misdemeanor conviction, if the applicant met the applicable requirements of the criteria of rehabilitation that the board developed. (BPC, section 480, subdivision (b).)

Operative July 1, 2020, BPC section 480 will prohibit the Bureau from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or on the basis of the facts underlying a conviction if the applicant "made a showing of rehabilitation pursuant to Section 482." (BPC, section 480, subdivision (b), as added by AB 2138, section 4.) In deciding whether to deny a license based on a conviction, the Bureau must consider evidence of the applicant's rehabilitation, pursuant to the process established in the Act, or its regulations, and as directed under BPC section 482. (BPC, section 481, subd. (c), as added by AB 2138, section 7; see also BPC, section 493, subd. (b)(2), as added by AB 2138, section 13 ["A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation"].)

To implement AB 2138, it is necessary for the Bureau to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to deny a license based on a criminal conviction. (BPC, section 482, subd. (a), as added by AB 2138, section 9.) The Bureau must also decide whether an applicant "made a showing of rehabilitation," if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation. (BPC, section 482, subd. (b), as added by AB 2138, section 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Bureau must consider when denying a license. The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Bureau in evaluating rehabilitation. (16 CCR section 4522, subs. (a)(4).) But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: "The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to

behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the Bureau must now consider whether an applicant who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

The proposal specifies the following criteria for the Bureau to consider when making the determination that the applicant who has successfully completed the criminal sentence has made a showing of rehabilitation: (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. The criteria are necessary to assist the Bureau in evaluating rehabilitation. Since the purpose of evaluating an applicant’s rehabilitation is to determine whether the applicant is sufficiently reformed to be licensed, but AB 2138 requires the Bureau to evaluate rehabilitation in the narrow context of an applicant who completed the criminal sentence without violating parole or probation, each of these criteria are narrow in scope and would provide to the Bureau information specific to the applicant’s criminal sentence and terms or conditions of parole or probation, so that the Bureau knows the relevant criteria it must consider to make the determination as to the applicant’s rehabilitation. In addition, to provide uniformity with other DCA boards and bureaus, the proposed criteria were adopted by the Bureau pursuant to DCA’s recommended rehabilitation criteria.

The Bureau must consider the nature and gravity of the crime because this is the offense against which the applicant’s rehabilitative efforts will be evaluated.

The Bureau will consider the length of the applicable parole or probation period because the length of time that the applicant served probation or parole without a violation is relevant to whether the applicant is rehabilitated and will comply with licensure requirements in the future. (See *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [“a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice”].)

The Bureau must consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the applicant is sufficiently rehabilitated.

The Bureau must consider the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, because the actual parole or probation terms can inform the Bureau on whether the applicant is rehabilitated. For instance, in cases where an applicant was convicted of a crime involving alcohol, probation terms requiring the applicant to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the applicant's rehabilitation. (See *In re Billings* (1990) 50 Cal.3d 358, 368 ["An alcoholic's rehabilitation is almost universally predicated on a choice to confront his or her problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous"].)

The Bureau must consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification, because this may be relevant to the Bureau's determination. For instance, if correctional authorities removed terms of parole or probation due to the applicant's good behavior, this would bear on the Bureau's evaluation of the applicant's rehabilitation and willingness to conform to the rules of licensure.

b. Add CCR Section 4522 Subsection (b) of Title 16 of the CCR

Purpose: The purpose of amending CCR section 4522, subsection (b) is to comply with the requirements of AB 2138, section 9, and BPC section 482, subdivision (b)(2), which requires the Bureau to consider whether an applicant has made a showing of rehabilitation if: (1) the applicant has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Bureau does not find that the applicant made a sufficient showing of rehabilitation based on the narrow criteria in subsection (a); or, (3) the denial is based on something other than a crime, such as professional misconduct. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also provides a specific, more comprehensive, list of criteria for the Bureau to consider for these applicants, which is not limited to the applicable parole or probation. The list of criteria incorporates the criteria from subsection (a) for applicants convicted of a crime, so that similarly-situated applicants have the opportunity to be evaluated by the Bureau under the same set of criteria. The list of criteria also anticipates that the Bureau may be considering "act(s)" that are the basis for the denial, since the Bureau may be evaluating the rehabilitation of an applicant where the ground for denial involves acts of professional misconduct, rather than a conviction. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards and bureaus under DCA.

Anticipated Benefit: The proposed revisions to CCR section 4522, subsection (b) would provide transparency and clarity to license applicants who have not completed their criminal sentence without a violation of parole or probation or otherwise do not qualify for consideration under subsection (a). Providing the list of rehabilitation criteria would

help license applicants understand the facts and documents to present to the Bureau to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, applicants who do not qualify for consideration under subsection (a), by listing rehabilitation criteria applicable to the applicant.

Rationale: Existing law required boards to develop criteria to evaluate the rehabilitation of an applicant when considering denying a license based on a conviction, acts of dishonesty, fraud, or deceit, or acts that would be grounds for discipline, and to consider evidence of rehabilitation in making such decisions. (BPC, section 482.) A board may not deny an applicant a license based solely on a misdemeanor conviction, if the applicant met the applicable requirements of the criteria of rehabilitation that the board developed. (BPC, section 480, subdivision (b).)

Operative July 1, 2020, BPC section 480 will prohibit the Bureau from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or based on the facts underlying a conviction if the applicant “made a showing of rehabilitation pursuant to Section 482.” (BPC, section 480, subd. (b), as added by AB 2138, section 4.) In deciding whether to deny a license based on a conviction, the Bureau must consider evidence of the applicant’s rehabilitation, pursuant to the process established in the Act, or its regulations, and as directed under BPC section 482. (BPC, section 481, subd. (c), as added by AB 2138, section 7; see also BPC, section 493, subd. (b)(2), as added by AB 2138, section 13 [“A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation”].)

To implement AB 2138, it is necessary for the Bureau to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to deny a license based on a conviction. (BPC, section 482, subd. (a), as added by AB 2138, section 9.) The Bureau must also decide whether an applicant or licensee “made a showing of rehabilitation,” if the applicant did not complete the criminal sentence at issue without a violation of parole or probation, or the board finds, in applying its rehabilitation criteria, that the applicant is rehabilitated. (BPC, section 482, subd. (b), as added by AB 2138, section 9.) AB 2138 also authorized the Bureau to deny a license based on prior disciplinary misconduct. Accordingly, it is necessary to amend the regulation to account for denials on this ground.

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Bureau must consider when denying a license. The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Bureau in evaluating rehabilitation. (16 CCR, section 4522, subs. (d).) But courts

historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the Bureau must now consider whether an applicant who has complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria. If, however, the applicant did not comply with the terms of parole or probation, the Bureau would apply its standard rehabilitation criteria, as modified in this proposal.

The proposal uses the existing rehabilitation criteria with the addition of the criteria to be specified in CCR section 4522, subsection (a)(1)-(5), and makes other minor revisions. Each of these criteria are designed to focus the Bureau’s evaluation on facts and circumstances relevant to an applicant’s rehabilitation, so that the Bureau knows the relevant criteria it must review to make the determination as to the applicant’s rehabilitation. In addition, to provide uniformity with other DCA boards and bureaus, the proposed criteria were adopted by the Bureau pursuant to DCA’s recommended rehabilitation criteria.

The Bureau will consider the nature and gravity of the crime or act for the same reasons as discussed for subsection (a). This is the offense or misconduct against which the Bureau will judge the applicant’s rehabilitation. This is also already an existing regulatory criterion. The Bureau proposes to amend “severity” to “gravity.” This is not a substantive change and would make the regulation internally consistent.

The Bureau will also consider evidence of acts or crimes committed after the act or crime that is the basis for denial. Such acts or crimes typically reflect additional misconduct by the applicant and bear on the Bureau’s decision regarding whether the applicant is sufficiently rehabilitated to be licensed and conform to the requirements of licensure. The Bureau would omit “which also could be considered as grounds for denial,” because AB 2138 repealed the Bureau’s ability to deny a license based on dishonest, fraudulent, or deceitful acts, or acts that would be grounds for discipline. This is also already an existing regulatory criterion.

The Bureau would consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person’s rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation. This criterion has not changed substantively from existing regulation.

The Bureau will consider whether the applicant complied with parole, probation, restitution or other sanctions imposed on the applicant. The Bureau proposes amending “The extent to which,” to “Whether,” but does not view this as a substantive change. The change would make this subsection consistent with subsection (d). This criterion is otherwise unchanged from existing regulation. The information embraced in this criterion bears on an applicant’s rehabilitation in terms of the applicant’s willingness to make amends from prior misconduct and willingness to conform to the rules of licensure. Accordingly, it is necessary for the Bureau to consider these elements to evaluate an applicant’s reformation from prior misconduct.

The Bureau will also consider the criteria in subsection (a). This is necessary to ensure that all applicants convicted of a crime have the opportunity to be evaluated under the same set of rehabilitation criteria. For applicants that completed their criminal parole or probation without a violation, the Bureau would first evaluate their eligibility for licensure under the criteria in subsection (a). If the applicant did not demonstrate sufficient rehabilitation under the criteria in subsection (a), the Bureau would apply the broader criteria in subsection (b). For applicants that did not complete their criminal parole or probation without a violation, the Bureau would apply the criteria in subsection (b), which incorporates the criteria from subsection (a). This way, similarly-situated applicants (those being considered for denial based on a conviction) have the benefit of the same set of criteria.

The Bureau would consider rehabilitation evidence the applicant submitted. There was no change to this criterion, and the Bureau is required to consider such evidence under BPC section 481(c). It is necessary to retain this requirement in order to consolidate the Bureau’s rehabilitation criteria in one place.

#### Amend CCR Section 4620 of Article 6 of Division 41 of Title 16 of CCR (Substantial Relationship Criteria)

a. Add CCR Section 4620, subsection (a)

Purpose: The purpose of amending CCR section 4620, subsection (a) is to expand the regulation to include discipline under Business and Professions Code (BPC) section 141, because the substantially related acts that are the basis for discipline in an out-of-state jurisdiction may be used to discipline a licensee under BPC section 141.

Anticipated Benefit: The proposed revisions to section 4620, subsection (a) would provide clarity to license applicants and licensees that the Bureau is statutorily authorized to suspend or revoke a license, as applicable, on the basis of discipline in an out-of-state jurisdiction. The proposal would also make aware relevant parties to any

administrative appeal arising from a licensing decision (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) that when disciplining applicants or licensees for a criminal conviction, the Bureau is required to determine whether the act is substantially related to the qualifications, functions, or duties of a professional fiduciary by using the listed criteria.

Rationale: BPC section 141 authorizes the Bureau to discipline a license on the basis of substantially related out-of-state discipline. The regulation seeks to implement, interpret, and make specific BPC section 141 by adding it to the Bureau's substantial relationship criteria regulation. Accordingly, the proposal is necessary to provide the appropriate notice to license applicants and licensees that discipline in an out-of-state jurisdiction is grounds for license suspension or revocation, and implement the requirements of BPC section 141. The proposal is also necessary for uniformity purposes and to consolidate into one regulation the criteria the Bureau will apply in evaluating whether a crime or other misconduct is substantially related to the licensed profession.

b. Add CCR Section 4620, subsection (b)

Purpose: The purpose of amending CCR section 4620, subsection (b) is to comply with the requirements of AB 2138, section 9, and BPC section 482, subdivision (b)(1), which requires the Bureau to consider whether a licensee has made a showing of rehabilitation if the licensee has completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also provides a specific list of criteria for the Bureau to consider for these licensees. The list of criteria is narrow in scope and limited to considerations relevant to the crime and the criminal sentence, since AB 2138 requires the Bureau to consider rehabilitation in the narrow context of a licensee who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards and bureaus under the Department of Consumer Affairs (DCA).

Anticipated Benefit: The proposed revisions to CCR section 4620, subsection (b) would provide transparency and clarity to licensees who have completed their criminal sentence without a violation of parole or probation. Providing the narrow list of rehabilitation criteria would help licensees understand the facts and documents to present to the Bureau to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, and the licensee's counsel) in advocating for or against, or deciding upon, licensees who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria applicable to the licensee.

Rationale: Existing law authorizes the Bureau to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession. (Business and Professions Code section 490, subd. (a))

AB 2138 will permit boards to discipline a licensee when the latter has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession, and specified conditions exist.

AB 2138 also specified three criteria that boards must consider when evaluating whether a crime is “substantially related” to the regulated business or profession. The criteria “shall include all of the following: (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 profession in which the applicant seeks licensure or in which the licensee is licensed.” (BPC, section 481, subd. (b), as added by AB 2138, section 7; see also BPC, section 493, subd. (b), as added by AB 2138, section 13.) Accordingly, the proposed regulation lists each of these criteria for the Bureau to consider when making the substantial relationship determination. This proposed addition is necessary to conform the regulation to statute, and to consolidate the Bureau’s substantial relationship criteria in one place.

c. Add CCR Section 4620, subsection (c)

Purpose: The purpose of adding CCR section 4620, subsection (c) is to clarify that for the purpose of suspending or revoking a license, crimes or acts that are substantially related to the qualifications, functions, or duties of a professional fiduciary include, but are not limited to, the enumerated crimes.

Anticipated Benefit: The proposed revisions to section 4620, subsection (c) would provide clarity to license applicants and licensees of the specific crimes or acts that are substantially related to the qualifications, functions, or duties of a professional fiduciary for purposes of suspending and/or revoking a license. The proposal would also make aware relevant parties to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent’s counsel) that substantially related crimes and acts include violations of other state or federal laws governing professional fiduciaries, insofar as the regulation does not limit crimes to a specific jurisdiction.

Rationale: The current regulation does not provide any listing of crimes or acts that are substantially related to the qualifications, functions or duties of a professional fiduciary. By incorporating these provisions, the proposal would clarify to licensees and to the public which acts and/or crimes are considered substantially related to the qualifications, functions, or duties of a professional fiduciary. Not including this

amendment may result in the Bureau being unable to discipline licensees, especially if the latter manages to persuade an Administrative Law Judge that the act in question is not substantially related to the qualifications, functions, or duties of a professional fiduciary since it is not specifically listed. In addition, inclusion of such list would be necessary to protect the consumer and to deter licensees from engaging in such conduct. The listed crimes are included for the reasons discussed in connection with section 4520, subsection (c).

### Amend CCR Section 4622 of Article 6 of Division 41 of Title 16 of CCR (Rehabilitation Criteria)

#### a. Add CCR Section 4622, subsection (a)

Purpose: The purpose of adding CCR section 4622, subsection (a) is to comply with the requirements of AB 2138, section 9, and BPC section 482, subdivision (b)(1), which requires the Bureau to consider whether a licensee has made a showing of rehabilitation if the licensee has completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also seeks to provide a specific list of criteria for the Bureau to consider for these licensees. For uniformity purposes, the proposal follows the same approach as CCR section 4522 subsection (a). The list of criteria is narrow in scope and limited to considerations relevant to the crime and the criminal sentence, since AB 2138 requires the Bureau to consider rehabilitation in the narrow context of an applicant who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the disciplinary process and uniformity of rehabilitation criteria with other boards and bureaus under DCA.

Anticipated Benefit: The proposed revisions to CCR section 4622, subsection (a) are intended to provide transparency and clarity to licensees who have completed their criminal sentence without a violation of parole or probation. Providing the narrow list of rehabilitation criteria would help licensees understand the facts and documents to present to the Bureau to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, licensees who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria applicable to the licensee.

Rationale: Existing law required boards and bureaus to develop criteria to evaluate the rehabilitation of a licensee when considering disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC, section 482.) To implement AB 2138 and maintain consistency in how the Bureau evaluates rehabilitation evidence between license denials and discipline, it is necessary for the Bureau to revise its regulations that establish criteria for evaluating rehabilitation,

when deciding whether to suspend or revoke a license based on a conviction. (BPC, section 482, subd. (a), as added by AB 2138, section 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Bureau must consider when suspending or revoking a license. It requires the Bureau to decide whether an applicant or licensee “made a showing of rehabilitation” in two circumstances: (1) the licensee completed the applicable criminal sentence without a violation of parole or probation, or (2) the Bureau finds, after applying its rehabilitation criteria, that the applicant is rehabilitated. (BPC, section 482, as added by AB 2138, section 9.)

The extent to which a person complied with the terms of parole or probation is already a factor boards and bureaus often consider when evaluating rehabilitation, and it is currently considered by the Bureau in evaluating rehabilitation. (16 CCR section 4622, subs. (d).) But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the Bureau must now consider whether a licensee who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

The proposal specifies the following criteria for the Bureau to consider when making the determination that the licensee who has successfully completed the criminal sentence has made a showing of rehabilitation: (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 licensee’s rehabilitation; and (5) the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification. The criteria are necessary to assist the Bureau in evaluating rehabilitation. Since the purpose of evaluating a licensee’s rehabilitation is to determine whether the licensee is sufficiently reformed to be licensed, but AB 2138 requires the Bureau to evaluate rehabilitation in the narrow context of a licensee who completed the criminal sentence without violating parole or probation, each of these criteria are narrow in scope and would provide to the Bureau information specific to the licensee’s criminal sentence and terms or conditions of parole or probation, so that the Bureau knows the relevant criteria it must consider to make the determination as to the licensee’s

rehabilitation. In addition, to provide consistency with how the Bureau considers rehabilitation criteria, and uniformity with other DCA boards and bureaus, the proposed criteria was adopted by the Bureau pursuant to DCA's recommended rehabilitation criteria.

The Bureau must consider the nature and gravity of the crime because this is the offense against which the licensee's rehabilitative efforts will be evaluated.

The Bureau will consider the length of the applicable parole or probation period because the length of time that the licensee served probation or parole without a violation is relevant to whether the licensee is rehabilitated and will comply with licensure requirements in the future. (See *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 ["a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice"].)

The Bureau must consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the licensee is sufficiently rehabilitated.

The Bureau must consider the terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation, because the actual parole or probation terms can inform the Bureau on whether the licensee is rehabilitated. For instance, in cases where a licensee was convicted of a crime involving alcohol, probation terms requiring the licensee to complete alcohol abuse treatment or participate in an alcohol abuse program would bear more heavily on the licensee's rehabilitation. (See *In re Billings* (1990) 50 Cal.3d 358, 368 ["An alcoholic's rehabilitation is almost universally predicated on a choice to confront his or her problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous"].)

The Bureau must consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification, because this may be relevant to the Bureau's determination. For instance, if correctional authorities removed terms of parole or probation due to the licensee's good behavior, this would bear on the Bureau's evaluation of the licensee's rehabilitation and willingness to conform to the rules of licensure.

b. Adding CCR Section 4622 subsection (b) of CCR

Purpose: The purpose of adding CCR section 4622, subsection (b) is to conform to changes the Bureau proposes to implement AB 2138, section 9, and BPC section 482,

subdivision (b)(2), which require the Bureau to consider whether an applicant has made a showing of rehabilitation if: (1) the applicant has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Bureau does not find that the applicant made a sufficient showing of rehabilitation based on a narrow set of criteria; or, (3) the Bureau's decision is based on something other than a crime. Likewise here, the Bureau would consider the rehabilitation criteria in subsection (b) if: (1) a licensee has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Bureau does not find that the licensee made a sufficient showing of rehabilitation based on the narrow criteria in subsection (a); or, (3) the Bureau's decision is based on something other than a crime, such as out-of-state discipline under BPC section 141.

As AB 2138 does not prescribe new rehabilitation criteria, the proposal also seeks to provide a specific, more comprehensive, list of criteria for the Bureau to consider for these licensees, which is not limited to the person's parole or probation. The list of criteria is mostly unchanged from existing regulation, and it anticipates that the Bureau may be considering "act(s)" that are the basis for discipline, since the Bureau may, for instance, be evaluating the rehabilitation of a licensee where the ground for discipline involves disciplinary acts in other states. The list of criteria incorporates the criteria from subsection (a) for licensees convicted of a crime, so that similarly-situated licensees have the opportunity to be evaluated by the Bureau under the same set of criteria. This proposal is also intended to provide predictability and consistency in the licensing and disciplinary process, and uniformity of rehabilitation criteria with other boards and bureaus under DCA. Thus, the proposal follows the same approach as section 4522 subsection (b).

Anticipated Benefit: The proposed revisions to CCR section 4622, subsection (b) would provide transparency and clarity to licensees who have not completed their criminal sentence without a violation of parole or probation, or otherwise do not qualify for consideration under subsection (a). Providing the list of rehabilitation criteria would help licensees understand the facts and documents to present to the Bureau to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal (e.g., the Deputy Attorney General, the Administrative Law Judge, and the licensee's counsel) in advocating for or against, or deciding upon, licensees who do not qualify for consideration under subsection (a), by listing rehabilitation criteria applicable to the licensee.

Rationale: Existing law required boards to develop criteria to evaluate the rehabilitation of a licensee when considering disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. (BPC, section 482.) To implement AB 2138 and maintain consistency in how the Bureau evaluates rehabilitation between license denials and discipline, it is necessary for the Bureau to revise its regulations that establish criteria for evaluating rehabilitation, when deciding

whether to suspend or revoke a license based on a conviction. (BPC, section 482, subd. (a), as added by AB 2138, section 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Bureau must consider when suspending or revoking a license. It requires the Bureau to decide whether a licensee “made a showing of rehabilitation” in two circumstances: (1) the licensee completed the applicable criminal sentence without a violation of parole or probation, or (2) the Bureau finds, after applying its rehabilitation criteria, that the licensee is rehabilitated. (BPC, section 482, as added by AB 2138, section 9.)

The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating rehabilitation, and it is currently considered by the Bureau in evaluating rehabilitation. (16 CCR section 4622, subs. (d).) But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].) Nonetheless, under AB 2138, the Bureau must now consider whether an licensee who has complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria. If, however, the licensee did not comply with the terms of parole or probation, the Bureau would apply its standard rehabilitation criteria, as modified in this proposal.

The proposal uses the existing rehabilitation criteria with the addition of the criteria to be specified in CCR section 4622, subsection (a)(1)-(5), and makes other minor revisions. Each of these criteria is designed to focus the Bureau’s evaluation on facts and circumstances relevant to a licensee’s rehabilitation, so that the Bureau knows the relevant criteria it must review to make the determination as to the licensee’s rehabilitation. In addition, to provide uniformity with other DCA boards and bureaus, the proposed criteria were adopted by the Bureau pursuant to DCA’s recommended rehabilitation criteria.

The Bureau will consider the nature and gravity of the crime or act for the same reasons as discussed for subsection (a)(1). This is the offense or misconduct against which the Bureau will judge the licensee’s rehabilitation. This is also already an existing regulatory criterion. The Bureau proposes to amend “severity” to “gravity.” This is not a substantive change and would make the regulation internally consistent.

The Bureau will also consider evidence of the licensee's total criminal record. It is necessary for the Bureau to consider the licensee's total criminal record because additional prior or subsequent misconduct by the licensee is relevant to the Bureau's decision regarding whether the licensee is sufficiently rehabilitated to be licensed and the licensee's willingness to conform to the requirements of licensure.

The Bureau would consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person's rehabilitation and, accordingly, it is necessary to consider this criterion in evaluating rehabilitation. This criterion has not changed substantively from existing regulation.

The Bureau will consider whether the licensee complied with parole, probation, restitution or other sanctions imposed on the licensee. This is an existing regulatory criterion. The information embraced in this criterion bears on a licensee's rehabilitation in terms of the licensee's willingness to make amends from prior misconduct and to conform to the rules of licensure. Accordingly, it is necessary for the Bureau to consider these elements to evaluate a licensee's reformation from prior misconduct.

The Bureau will also consider the criteria in subsection (a). This is necessary to ensure that all licensees convicted of a crime have the opportunity to be evaluated under the same set of rehabilitation criteria. For licensees that completed their criminal parole or probation without a violation, the Bureau would first evaluate their eligibility for licensure under the criteria in subsection (a). If the licensee did not demonstrate sufficient rehabilitation under the criteria in subsection (a), the Bureau would apply the broader criteria in subsection (b). For licensees that did not complete their criminal parole or probation without a violation, the Bureau would apply the criteria in subsection (b), which incorporates the criteria from subsection (a). This way, similarly-situated licensees (those being considered for discipline based on a conviction) have the benefit of the same set of criteria.

The Bureau would consider evidence that a licensee's conviction was dismissed pursuant to Penal Code section 1203.4. It is necessary to consider dismissal proceedings because they are relevant to the Bureau's evaluation of whether a licensee is rehabilitated.

The Bureau would consider rehabilitation evidence the licensee submitted. This is an existing regulatory criterion. It is necessary to retain this requirement in order to maintain consistency between the Bureau's evaluation of rehabilitation in the licensing and discipline context.

#### Underlying Data

- None

### Business Impact

The proposed regulations will not have a significant adverse economic impact on businesses as the regulations do not directly affect businesses. This initial determination is based on the purpose of AB 2138, which sought to reduce barriers to licensure for applicants and licensees with criminal histories or licensure discipline. The Bureau anticipates that the proposed regulations will impact businesses to the extent that individual applicants or licensees are able to be licensed or retain licensure under the proposal. The Bureau does not know how many applicants will gain or retain licensure but does not anticipate the number to significantly impact businesses.

### Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- It will not create new businesses or eliminate existing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- It will not affect the expansion of businesses currently doing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or licensure discipline to obtain and maintain licensure.
- This regulatory proposal, by reducing barriers to licensure for individuals with prior criminal convictions and improving clarity, transparency, and consistency in the Bureau's use of their criminal histories, may benefit the health and welfare of California residents by providing economic opportunity to individuals who were previously excluded from licensure, reducing recidivism, and increasing consumer access to licensed professional fiduciaries.
- This regulatory proposal does not affect worker safety because it establishes criteria, based upon recent statutory mandates for licensure following the applicant's or licensee's criminal conviction. It does not involve worker safety.
- This regulatory proposal does not affect the state's environment because it only regulates license applicants and licensees and their qualifications for licensure following a criminal conviction or disciplinary action. It does not involve environmental issues.

### Specific Technologies or Equipment

This regulatory proposal does not mandate the use of specific technologies or equipment.

### Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the regulation is proposed or would be as effective or less burdensome to affected private persons than the proposed regulation, or equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

- Option 1: To pursue a regulatory change that requires the Bureau to find rehabilitation if the applicant or licensee completed the terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Bureau believes that reviewing each individual on the basis of multiple criteria is the better indicator whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Bureau rejected this option.
- Option 2: Do nothing, meaning the Bureau would not adopt the regulations. The Bureau opted not to pursue this option because per AB 2138, the Bureau is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the Bureau in writing relevant to the above determinations at 1625 North Market Blvd., Suite S-209, Sacramento, California 95834.