

**State of California
Office of Administrative Law**

In re:
Professional Fiduciaries Bureau

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections: 4521

Amend sections: 4520, 4522, 4620, 4622

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

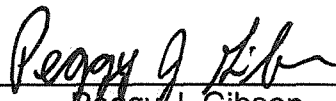
OAL Matter Number: 2020-0821-05

OAL Matter Type: Regular (S)

This action by the Professional Fiduciaries Bureau adopts criteria to be used in determining whether a crime, act, or professional misconduct is substantially related to the qualifications, functions, and duties of a licensee, or when an applicant or licensee has made a showing of rehabilitation related to a crime, act, or professional misconduct when considering denial, suspension, or revocation of a license. The proposed amendments implement amendments to the Business and Professions Code made by Assembly Bill 2138 (Stats. 2018, ch. 995).

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 2/1/2021.

Date: February 1, 2021



Peggy J. Gibson
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Rebecca May , Bureau Chief
Copy: Angela Cuadra

REGULAR

See instructions on reverse)

For use by Secretary of State only

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

FEB 01 2021

1:55 p.m.

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2020-0211-	112020-0821-05	S
For use by Office of Administrative Law (OAL) only			
RECEIVED DATE	PUBLICATION DATE		
FEB 11 '20	FEB 21 '20	2020 AUG 21 P 3:23	
Office of Administrative Law		OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	

AGENCY WITH RULEMAKING AUTHORITY
California Professional Fiduciaries Bureau

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Substantial Relationship & Rehabilitation Criteria	TITLE(S) 16	FIRST SECTION AFFECTED 4520	2. REQUESTED PUBLICATION DATE February 21, 2020
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Angela Cuadra	TELEPHONE NUMBER (916) 574-7341	FAX NUMBER (Optional) (916) 574-8645
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2020 08-2	PUBLICATION DATE 2-21-20

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Substantial Relationship & Rehabilitation Criteria

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) TITLE(S) 16	ADOPT 4521
	AMEND 4520, 4522, 4620, 4622
	REPEAL

3. TYPE OF FILING

Regular Rulemaking (Gov. Code §11346)
 Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
 Emergency (Gov. Code, §11346.1(b))

Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
 Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

Emergency Readopt (Gov. Code, §11346.1(h))
 File & Print
 Other (Specify)

Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
 Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) Effective on filing with Secretary of State \$100 Changes Without Regulatory Effect Effective other (Specify) per agency July 1, 2020 or on filing thereafter

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal
 Other (Specify) Kimberly Kirchmeyer, Director, Department of Consumer Affairs *Kimberly Kirchmeyer*

7. CONTACT PERSON
Angela Cuadra TELEPHONE NUMBER (916) 574-7341 FAX NUMBER (Optional) (916) 574-8645 E-MAIL ADDRESS (Optional) angela.cuadra@dca.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Rebecca May

DATE
8/21/20

TYPED NAME AND TITLE OF SIGNATORY
Rebecca May, Bureau Chief

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 01 2021

Office of Administrative Law

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 41.
PROFESSIONAL FIDUCIARIES BUREAU

ORDER OF ADOPTION

§ 4520. Substantially Related Criteria for Denial of License.

(a) For the purposes of the denial of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a professional fiduciary if to a substantial degree it demonstrates evidences present or potential unfitness of a person holding a professional fiduciary license to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare. Such

(b) In making the determination required for the denial of a license for the conviction of a crime substantially related to the qualifications, functions, or duties of a professional fiduciary, all of the following criteria shall be considered:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of a professional fiduciary.

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

(1) A conviction of crimes involving domestic abuse.

(2) A conviction of crimes involving elder abuse.

(3) A conviction of crimes involving child abuse.

(4) Conviction of a sex crime or crimes in which registration as a sex offender is required.

(5) Conviction for assault and/or battery.

(6) Conviction for driving under the influence of drugs or alcohol.

(7) Conviction of financial crimes involving fiscal dishonesty or breach of fiduciary responsibilities of any kind, dishonesty, money laundering, fraud, deceit, robbery, theft, grand theft, larceny, burglary, identity theft, or obtaining money, labor, or property under false pretenses, or other crimes listed in Section 4521.

(8) Conviction of crimes involving human trafficking.

(9) Conviction of crimes involving false imprisonment.

(10) Conviction of crimes involving kidnapping.

(11) Conviction of crimes involving extortion.

(12) Conviction of crimes involving murder or attempt thereof.

(13) Conviction of crimes involving terrorism.

Note: Authority cited: Sections 481 and 6517, Business and Professions Code.
Reference: Sections 480, 481, 493, 6536, and 6537, Business and Professions Code.

§ 4521. Criteria to Aid in Determining if Felony Financial Crimes Are Directly and Adversely Related to Fiduciary Qualifications, Functions, or Duties of a Licensee.

For the purposes of Section 480, subdivision (a)(1)(B)(ii) of the Business and Professions Code, a financial crime that is classified as a felony, including felony conspiracy or felony attempt to commit that crime, shall be considered to be directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary if it involves dishonesty, fraud, deceit, or theft that resulted in or could have resulted in either: (i) direct financial benefit to the applicant or another person, estate, or trust, or (ii) direct financial harm to another person, estate, or trust. Financial crimes that are directly and adversely related to the fiduciary qualifications, functions, or duties of a professional fiduciary shall include, but are not limited to, the following:

(a) Crimes involving the acquisition or provision of false, altered, forged, counterfeit, or fraudulent statements or documents.

(b) Crimes involving stolen property, embezzlement, money laundering, fraud, theft, grand theft, larceny, burglary, identity theft, or obtaining money, labor, or property under false pretenses.

Note: Authority cited: Sections 480 and 6517, Business and Professions Code.
Reference: Sections 480, 481, 492, 6536, and 6537, Business and Professions Code.

§ 4522. Rehabilitation Criteria for Denial of License.

(a) When considering the denial of a license under Section 480 or Section 6536, subdivision (b) of the Business and Professions Code on the ground that the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of a professional fiduciary, the Bureau, in evaluating the shall consider whether the applicant made a showing of rehabilitation of the applicant and his or her present eligibility for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Bureau shall consider the following criteria:

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

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

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

(b) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the Bureau determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), or the denial is based

on professional misconduct, the Bureau shall apply the following criteria in evaluating an applicant's rehabilitation:

(a) (1) The nature and severity/gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

(b) (2) Evidence of any act(s), professional misconduct, or crime(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial which also could be considered grounds for denial under Sections 480 and 6536.

(c) (3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subdivision (a) or (b) paragraph (1) or (2).

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

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

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

Note: Authority cited: Sections 481, 482, and 6517, Business and Professions Code. Reference: Sections 480, 481, 482, 488, 6536, and 6537, Business and Professions Code.

§ 4620. Substantially Related Criteria for License Suspension or Revocation.

(a) For the purposes of the suspension or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a fiduciary professional fiduciary if to a substantial degree it demonstrates evidences present or potential unfitness of a person holding a professional fiduciary license to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare. Such

(b) In making the determination required for the suspension or revocation of a license for the conviction of a crime substantially related to the qualifications, functions or duties of a professional fiduciary, all of the following criteria shall be considered:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of a professional fiduciary.

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

(1) A conviction of crimes involving domestic abuse.

(2) A conviction of crimes involving elder abuse.

(3) A conviction of crimes involving child abuse.

(4) Conviction of a sex crime or crimes in which registration as a sex offender is required.

(5) Conviction for assault and/or battery.

(6) Conviction for driving under the influence of drugs or alcohol.

(7) Conviction of financial crimes related to and/or involving fiscal dishonesty or breach of fiduciary responsibilities of any kind: dishonesty, money laundering, fraud, deceit,

robbery, theft, grand theft, larceny, burglary, identity theft, or obtaining money, labor, or property under false pretenses, or other crimes listed in Section 4521.

(8) Conviction of crimes involving human trafficking.

(9) Conviction of crimes involving false imprisonment.

(10) Conviction of crimes involving kidnapping.

(11) Conviction of crimes involving extortion.

(12) Conviction of crimes involving murder or attempt thereof.

(13) Conviction of crimes involving terrorism.

Note: Authority cited: Sections 481 and 6517, Business and Professions Code.
Reference: Sections 141, 481, 490, 492, 493, 6580, and 6584, Business and Professions Code.

§ 4622. Rehabilitation Criteria for License Suspension or Revocation.

(a) When considering the suspension or revocation of a license under Section 480 or 6536 490 of the Business and Professions Code, the Bureau, in evaluating the shall consider whether the licensee made a showing of rehabilitation of the licensee and his or her present eligibility for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Bureau shall consider the following criteria:

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

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

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

(b) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the Bureau determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), or the suspension or revocation is based on a disciplinary action as described in Section 141 of the Business and Professions Code, the Bureau shall apply the following criteria in evaluating the licensee's rehabilitation:

(a) (1) The nature Nature and severity gravity of the act(s), underlying act(s) in the disciplinary action, or crime(s) under consideration as grounds for suspension or revocation.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation which also could be considered grounds for suspension or revocation under Section 6584 of the Business and Professions Code.

(2) Total criminal record.

(c) (3) The time that has elapsed since commission of the act(s), underlying act(s) in the disciplinary action, or crime(s) referred to in subdivision (a) or (b).

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

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

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

~~(e)~~ (7) Evidence, if any, of rehabilitation submitted by the licensee.

Note: Authority cited: Sections 482 and 6517, Business and Professions Code.
Reference: Sections 141, 482, 488, 490, 493, 6580, and 6584, Business and Professions Code.