

**State of California
Office of Administrative Law**

In re:
Bureau of Household Goods and Services

Regulatory Action:

Title 16, California Code of Regulations

Amend sections: 2767, 2768

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2020-1023-02

OAL Matter Type: Regular (S)

In this action, the Bureau of Household Goods and Services adopts criteria to be used in determining whether a crime, professional misconduct, or other act is substantially related to the professional practice of its licensees for purposes of license denial, suspension, or revocation. The action adopts criteria for determining whether an applicant for a license, or for reinstatement of a license, or for the modification or termination of probation of a license, has been rehabilitated subsequent to a criminal conviction, professional misconduct, or other act. The action also adopts criteria for determining whether a licensee has been rehabilitated, subsequent to a criminal conviction, professional misconduct, or other act, when considering whether to suspend or revoke their license.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/9/2021.

Date: April 9, 2021



Eric Partington
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Nicholas Oliver, Bureau Chief
Copy: Diana Godines

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2020-1023-02	S

For use by Office of Administrative Law (OAL) only

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

APR 09 2021

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OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Bureau of Household Goods and Services

AGENCY FILE NUMBER (If any)

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

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Substantial Relationship Criteria and Rehabilitation Criteria	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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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.)	ADOPT
	AMEND 2767, 2768
	REPEAL
TITLE(S) 16	

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> 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.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)		

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)

4/16/20 - 5/1/20 per agency request

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

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) July 1, 2020 (or on filing thereafter)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) Kimberly Kirchmeyer, Director, Department of Consumer Affairs		

7. CONTACT PERSON Diana Godines	TELEPHONE NUMBER (916) 999-2068	FAX NUMBER (Optional) (916) 921-7279	E-MAIL ADDRESS (Optional) diana.godines@dca.ca.gov
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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.

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 09 2021

Office of Administrative Law

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Yeaphana La Marr

DATE

10/20/2020

TYPED NAME AND TITLE OF SIGNATORY

Yeaphana La Marr, Acting Bureau Chief

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 27. Bureau of Electronic and Appliance Repair

Order of Adoption

§ 2767. Substantial Relationship Criteria

(a) For the purposes of denial, suspension, or revocation of the registration of a repair service dealer or service contractor pursuant to Section 141, Division 1.5 (commencing with Section 475), subdivision (a)(7) of Section 9841, subdivision (a) of Section 9853, or subdivision (b) of Section 9855.7 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 service dealer registrant if to a substantial degree it evidences present or potential unfitness of a service dealer registrant to perform the functions authorized by his~~the~~ registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(b) In making the substantial relationship determination required under subsection (a) for a crime, the Bureau shall consider all of the following criteria:

- (1) The nature and gravity of the offense.
- (2) The number of years elapsed since the date of the offense.
- (3) The nature and duties of a service dealer or service contractor.

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

(a)(1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 20, Division 3 of the Business and Professions Code.

(b) Conviction of a crime involving fiscal dishonesty.

(2) Crimes or acts involving dishonesty, fraud, deceit or theft with the intent to benefit oneself or another or to harm another including, but not limited to:

(A) Making or authorizing any statement or advertisement that is untrue or misleading, and that is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(B) Making any false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, installation, service, or maintenance of equipment.

(C) Conduct constituting incompetence or negligence.

(D) Any willful departure from or disregard of accepted trade standards for good and workmanlike installation or repair.

(3) Crimes involving physical violence against others.

(d) If an applicant or registrant wishes to contest a registration denial, suspension, or revocation based on a conviction, the applicant or registrant may request a hearing pursuant to Business and Professions Code section 9848 to determine if the registration should be denied, suspended, or revoked.

NOTE: Authority cited: Sections 9814 and 9814.5, Business and Professions Code.
Reference: Sections 141, 475, 480, 481, 485, 488, 490, 493, and 9841, 9848, 9853 and 9855.7, Business and Professions Code.

§ 2768. Criteria for Rehabilitation

~~(a) The Bureau shall evaluate the rehabilitation of the applicant, registrant, or petitioner and his or her present eligibility for a registration:~~

~~(1)(a) When considering the denial, suspension, or revocation of a registration under the provisions of Section 480 of the Code; pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code on the grounds that the applicant or registrant has been convicted of a crime, the Bureau shall consider whether the applicant or registrant made a showing of rehabilitation, if the applicant or registrant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Bureau shall consider the following criteria:~~

~~(2) When considering the suspension or revocation of a registration on the grounds that a service dealer has been convicted of a crime;~~

~~(3) When considering a petition for reinstatement of a registration under the provisions of Section 11522 of the Government Code.~~

~~(b) In evaluating the rehabilitation of the applicant, registrant, or petitioner, 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 or registrant'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 probation, the Bureau determines that the applicant did not make the showing of rehabilitation based on the criteria in subsection (a), the denial is based on professional misconduct, the suspension or revocation is based on a disciplinary action as described

in Section 141 of the Code, or the denial, suspension, or revocation is based on one or more grounds specified in Sections 9841, 9853 or 9855.7 of the Business and Professions Code, the Bureau shall apply the following criteria in evaluating an applicant's or registrant's rehabilitation:

(1) The nature and the severity of the act(s), professional misconduct, disciplinary action(s) or crime(s) under consideration.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code when considering an applicant pursuant to subsection (a)(1) of this section.

(3) Total criminal record when considering a person pursuant to subsections (a)(2) and (a)(3) of this section.

(2) The total criminal record, and evidence of any act(s), professional misconduct, disciplinary action(s) or crime(s) committed subsequent to the act(s), professional misconduct, disciplinary action(s) or crime(s) under consideration as grounds for denial, suspension, or revocation.

(4)(3) The time that has elapsed since commission of the act(s), professional misconduct, disciplinary action(s) or crime(s) under consideration.

(4) Whether the applicant or registrant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or registrant.

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

(6) Evidence, if any, of rehabilitation submitted by the applicant, registrant, or petitioner. Such evidence may include, but is not limited to, proof of additional training or education, evidence of service to the community, and, if applicable, evidence of expungement proceedings, pursuant to Section 1203.4 of the Penal Code.

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

(6) Evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

(7) Whether the applicant or registrant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(8) Evidence, if any, of rehabilitation submitted by the applicant or registrant.

(c) When considering a petition for reinstatement of a registration under the provisions of Section 11522 of the Government Code, the Bureau shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in this section.

NOTE: Authority cited: Sections 9814 and 9814.5, Business and Professions Code.
Reference: Sections 475, 480, 481, 482, 488, 490, 493, and 9841, 9853 and 9857.7,
Business and Professions Code.