

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

MODIFIED TEXT

Proposed amendments to the regulatory language are shown in single underline for new text and ~~single strikethrough~~ for deleted text.

Modifications to the proposed regulatory language are shown in double underline for new text and ~~double strikethrough~~ for deleted text.

Article 7

§ 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 of 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; and
- (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. This includes, but is 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 the 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 ~~481, 493~~, 9814 and 9814.5, Business and Professions Code. Reference: Sections 141, 475, 480, 481, 485, 488, 490, 493, 9841, 9841, 9853, 9855.7, and 9848, 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 ~~was~~ has been convicted of a crime, the Bureau shall consider whether the applicant or registrant made a showing of rehabilitation ~~and is presently eligible for a registration~~, 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 subdivision (a) is inapplicable or the Bureau determines the applicant or registrant did not make the showing of rehabilitation based on the criteria in subdivision (a), If the applicant has not completed the criminal sentence at issue without a violation of probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subsection (a), the denial, suspension, or revocation 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. ~~The Bureau shall find that the applicant or registrant made a showing of rehabilitation and is~~~~

~~presently eligible for a registration if, after considering the following criteria, the Bureau finds the applicant or registrant is rehabilitated:~~

~~(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, including 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 under Division 1.5 (commencing with Section 475) of the Business and Professions Code.~~

~~(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, probations, 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) 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 ~~482~~, 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.