

Date of Hearing: January 14, 2020

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1616 (Low) – As Amended January 6, 2020

SUBJECT: Department of Consumer Affairs: boards: expunged convictions.

SUMMARY: Requires professional licensing boards under the Department of Consumer Affairs that post information on their internet website about a revoked license due to a criminal conviction to update or remove information about the revoked license should the board receive an expungement order related to the conviction, as specified.

EXISTING LAW:

- 1) Establishes the Department of Consumer Affairs within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC § 100)
- 2) Creates various boards, bureaus, and commissions under the jurisdiction of the Department of Consumer Affairs whose purpose are to regulate private businesses and professions deemed to engage in activities that have potential impact on the public health, safety, and welfare of the people of California. (BPC § 101)
- 3) Creates the Medical Board of California under the jurisdiction of Department of Consumer Affairs, responsible for regulating California physicians and surgeons. (BPC § 2001)
- 4) Authorizes a board to suspend or revoke a current license under its jurisdiction on the grounds that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. (BPC § 490)
- 5) Requires certain boards to publish on the internet information on accusations, suspensions, revocations, and related disciplinary actions taken by a board against a licensee under its jurisdiction. (BPC § 27)
- 6) Specifies additional internet posting requirements of licensee disciplinary-related information, in addition to suspensions and revocations information, for the Medical Board of California. The information to be posted include temporary restraining orders, interim suspension orders, citations, probations, limitations on practice, disciplinary actions taken by a hospital, and accusations filed by the Office of the Attorney General. Requires the Medical Board to post licensee information on its website regarding civil judgements, arbitration, and settlements, as specified. (BPC § 2027)
- 7) Requires the Medical Board of California, within six months of receiving an expungement order for a misdemeanor or felony conviction, to post a notification of the expungement order and its date on its internet website. (BPC § 2027)
- 8) Provides for a post-conviction expungement process for individuals convicted of a crime, by authorizing a judicial court, at its discretion, to dismiss a person's guilty verdict and releasing them from any penalty that was issued as a result of the conviction, but only if the person has

fulfilled their conditions of probation in its entirety, is not serving a prison sentence, and is not charged with a crime. (PEN § 1203.4)

THIS BILL:

- 1) Requires a board to update information on its internet website for individuals who had their license revoked if the board receives a copy of an expungement order granted to the ex-licensee. Specifically, boards who post disciplinary information on their web sites would be required to do either of the following:
 - a) Post notification of the expungement order and the date it was granted, if the ex-licensee reapplies for licensure or has been granted a new license; or
 - b) Remove the original posted information on the license revocation, if the ex-licensee does not currently have a license and does not apply for licensure.
- 2) Requires a board to update or remove information on the revocation within six months of receiving the expungement order related to the conviction.
- 3) Requires a person seeking to have their license revocation history updated or removed to pay a fee to the board, at an amount determined by the Department of Consumer Affairs.
- 4) Clarifies that the Medical Board of California's internet web site posting requirements take precedence over the bill's provisions, should a conflict occur.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by the Legislative Counsel

COMMENTS:

Purpose. This bill is author sponsored. According to the author, "[This bill] is designed to reduce employment barriers for people with previous criminal records who have been rehabilitated and whose conviction has been dismissed, or expunged, through the judicial process. Under current law, individuals who have successfully rehabilitated may continue to face stigma and barriers to find employment. Although they are intent on positively contributing to society by finding employment and self-sufficiency, state records may not reflect an expungement that was granted by the courts. [This bill] allows individuals who were formerly licensed through the state of California to appropriately reflect the record of their rehabilitation as granted by the judicial branch, and improve their opportunity to seek meaningful employment."

Background.

Suspension and Revocation of Licenses. Boards under the jurisdiction of the Department of Consumer Affairs exercise the authority to take disciplinary action against a current licensee. Generally, under the umbrella of BPC 490, boards may suspend or revoke a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the professions.

In 2018, the legislature enacted AB 2138, which, among other provisions to reduce barriers to licensure, enumerates what criteria the boards must consider to determine whether a crime is substantially related to the profession. Effective July 1, 2020, boards will need to examine factors

such as the nature and gravity of the offense, the number of years elapsed since the offense, and evidence of rehabilitation.

Due to the diverse and unique nature of each profession, every board has additional statutory standards within their practice act that define unprofessional conduct that may lead to disciplinary action. For example, private investigators may face license suspension or revocation for impersonating a law enforcement officer, while a veterinarian may have their license suspended or revoked for cruelty to animals.

Online Disclosure of Disciplinary Actions Generally. To allow for consumer transparency, certain boards under the Department of Consumer Affairs are required to post on their internet website disciplinary information on a licensee. Members of the public can access information online and check the validity of a license, its issuance and expiration date, and if it has faced disciplinary action from the board.

While the public can access general, basic license information across all boards through the Department of Consumer Affairs' online portal, the disciplinary information required to be disclosed online can vary from board to board.

Online Disclosure of Disciplinary Actions under the Medical Board of California. The Medical Board of California is already required, within six months of receiving a certified copy of an expungement order, to post notification of the expungement order and its date online; effectively complying with one of AB 1616's proposed provisions.

Under BPC 2027, the Medical Board of California has additional and more comprehensive online disclosure requirements of disciplinary history for licensed physicians and surgeons under the board's jurisdiction. This includes the requirement to post temporary restraining orders, interim suspension orders, citations, probations, and limitations on practice ordered by the board or the board of another state, disciplinary actions taken by a hospital, and accusations filed by the Office of the Attorney General. The Medical Board is also required to disclose online licensee information regarding civil judgements, arbitration awards, and certain citations and settlements.

As currently written, AB 1616 gives precedence to all of the online posting requirements enumerated for the Medical Board of California over the bill's own provisions, should a conflict occur.

Expungement Relief in California. The California Penal Code grants judicial courts discretionary authority to issue expungements – a process also known as a dismissal. An expungement generally releases a person convicted of a crime from the negative consequences of a conviction by setting aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismissing the accusation or complaint.

An expungement does not delete nor seal the record of conviction. If an entity is authorized to request a criminal background check on an individual, the background check would reveal the expunged conviction, and note the dismissal on the record.

In order to be eligible for an expungement, a person must have completed the term of their probation in its entirety. In addition, they must not be serving a sentence nor be charged with

another criminal offence. Expungement cannot be granted if a person is convicted for specified sex crimes or Vehicle Code violations.

Expungement and Licensure. Under BPC 480, boards under the Department of Consumer Affairs may deny a license based on specific past criminal convictions. However, an individual may not be denied a license on the basis of a conviction that has been expunged, dismissed, or if the person has received a certificate of rehabilitation.

For rehabilitated individuals that were convicted of a crime, the permanent nature of a criminal record can create challenge in finding employment and stability after incarceration. While an expungement does not eliminate the person's record, it provides a potential opportunity for a rehabilitated individual to secure employment through state licensure.

Prior Related Legislation. AB 2138 (Chiu/Low, Chapter 995, Statutes of 2018). Reduced barriers to licensure for individuals with prior criminal convictions by limiting a regulatory board's discretion to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial, with several enumerated exemptions.

AB 2396 (Bonta, Chapter 737, Statutes of 2014). Prohibits a board within the Department of Consumer Affairs from denying a license based solely on a conviction that has been withdrawn, set aside, or dismissed by the court.

ARGUMENTS IN SUPPORT:

None on file.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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