

Consideration of Proposed Amendments to Board's Minor Criminal History Policy

Background: At its April 2010 meeting, the Board approved a revised minor criminal history policy. This policy allows Staff to close without prejudice matters wherein the applicant, petitioner or licensee has a minor criminal history that meets the criteria for no action, as set out in the policy. The minor crimes are specifically listed in the policy and, the age of the crime is irrelevant.

The Board further expanded its minor criminal history policy at its April 2011 meeting. This policy specifically addresses certain misdemeanor offenses and provides an analysis based on the type of misdemeanor and age of the crime. The policy allows Staff to close without action matters involving misdemeanor offenses committed more than five (5) years ago for Class B or C Misdemeanors and ten (10) years ago for Class A misdemeanors.

Currently, the Board's minor criminal history policy includes two levels of review of matters involving minor criminal offenses.

House Bill (HB) 798 and HB 1659 were passed during the 83rd Legislative Session and will become effective on September 1, 2013. These bills may affect the application of the Board's minor criminal history policy in some cases. Staff's recommended changes to the Board's minor criminal history policy are included in Attachment "A" (see underlined text). These changes recognize the requirements set forth in HB 798 and HB 1659.

Board action: Move to adopt the proposed changes to the Board's Minor Criminal History Policy, as set out in Attachment "A".

Attachment "A"

Policy on Minor Criminal History Review and Staff Approval of Applicants and Petitioners with Minor Criminal History

Purpose:

To fulfill its mission of public protection, the Board believes that a single minor criminal incident, or minor criminal behavior, by applicants and petitioners for orders of eligibility should be investigated when relevant, but should ordinarily not result in disciplinary action.

This policy allows Staff to conduct an initial graduated review process for a minor single incident or minor criminal misdemeanor offenses. This policy allows Staff to close without prejudice matters wherein the applicant or petitioner has a history of minor criminal behavior that meets the below criteria for no action. If the minor criminal history does not meet the initial review criteria for no action, then Staff may also evaluate the minor criminal history based on the age of the misconduct.

A. Initial Minor Criminal History Review

Single incident or minor criminal behavior resulting in conviction or deferred adjudication that may be closed without prejudice includes, but is not limited to:

1. One misdemeanor DWI/DUI (not on probation)
2. One misdemeanor offense of Possession of Marijuana
3. Up to two misdemeanor Theft by Check
4. One misdemeanor Domestic/Family Violence
5. One misdemeanor Theft over \$20.00, but less than \$250.00 (normally associated with shop lifting)
6. One misdemeanor Shoplifting
7. One misdemeanor Criminal Mischief
8. Misdemeanor Graffiti
9. One misdemeanor Criminal Trespass
10. One misdemeanor Disorderly Conduct
11. Up to two misdemeanor Public Intoxication
12. Up to two misdemeanor Pan Handling
13. Misdemeanor "loud noise" violations
14. One misdemeanor Reckless Driving
15. Misdemeanor Minor in Possession of Tobacco
16. One misdemeanor Selling Alcohol to a Minor
17. Failure to Appear
18. Vehicular Molestation (slashing tires)
19. An arrest for a misdemeanor (must be a misdemeanor included in this list) that has been dismissed completely or where prosecution has been denied
20. Up to three (3) prior misdemeanors (each misdemeanor must be a

misdemeanor included in this list) and the most recent misdemeanor is at least ten (10) years old

Each discovered incident of criminal behavior will not be closed until the individual applicant or petitioner has provided a copy of the underlying court documents, or a reasonable explanation as to why the documents are not available. The individual must also provide a written explanation regarding each criminal charge, along with any other material to verify the minor nature of the conduct or the lack of nexus to the nursing practice.

Before a matter is closed without further investigation or action, Staff will review the documents, information and individual's written explanation. After a cumulative review, the matter will not be closed unless it is established that:

1. There appears to be no material omissions or misrepresentations;
2. The incident is isolated or minor;
3. There is no recency of conduct or other evidence of a failure to rehabilitate; and
4. There is no reasonable basis to conclude the behavior will affect the individual's ability to safely practice nursing.

B. Age Based Minor Criminal History Review

The Board has determined that certain misdemeanor offenses have little impact on the ability of an individual to safely practice nursing and pose little risk of harm to the public. In such cases, the Board believes it is appropriate to close the matter without action against the individual, provided that the individual fully disclosed the conviction or deferred adjudication to the Board on all relevant application and renewal forms.

Policy Regarding Misdemeanor Offenses:

The following applies to Class Band C Misdemeanor Offenses:

1. The Board will not take disciplinary action against an applicant or petitioner for a Class B or C misdemeanor offense when a judicial order of conviction, or deferred adjudication, was entered more than five (5) years before the individual applies for initial licensure.
2. The Board will not take disciplinary action against a licensee for a Class B or C misdemeanor offense when a judicial order of conviction, or deferred adjudication, was entered more than five (5) years before the Board learns of the conviction or deferred adjudication.

The following applies to Class A Misdemeanor Offenses:

1. The Board will not take disciplinary action against an applicant or petitioner for a Class A misdemeanor offense when a judicial order of conviction, or deferred adjudication, was entered more than ten (10) years before the

- individual applies for initial licensure.
2. The Board will not take disciplinary action against a licensee for a Class A misdemeanor offense when a judicial order of conviction, or deferred adjudication, was entered more than ten (10) years before the Board learn of the conviction or deferred adjudication.

C. Exceptions

The following EXCEPTIONS apply to the above provisions regarding Class A, B, or C Misdemeanor Offenses:

1. The Board may take disciplinary action against an applicant, petitioner or licensee for a Class A, B, or C misdemeanor offense, regardless of when the judicial order of conviction, or deferred adjudication, of the misdemeanor was entered, if the misdemeanor is part of a pattern of conduct.
2. The Board may take disciplinary action against an applicant, petitioner or licensee for a Class A misdemeanor offense identified in the Board's rules, regardless of when the conviction or deferred adjudication for the misdemeanor offense occurred.

D. Non-disclosure Policy

This policy does not prevent the Board from taking disciplinary action against an applicant, petitioner or license for the non-disclosure of any criminal offense in violation of the Occupations Code §301.452(b)(2), regardless of when the offense occurred.

E. Providing Documentation

An individual will not be required to provide documentation relating to a misdemeanor offense unless the Board requests such documentation for good cause.

****Note:**

House Bill (HB) 798

Pursuant to HB 798 (effective 9/1/13), a licensing authority may not suspend, revoke, or deny licensure to an individual who has been convicted *only* of an offense punishable as a Class C misdemeanor.

The provisions of this policy shall be applied consistently with this statutory requirement.

HB 1659

Pursuant to HB 1659 (effective 9/1/13), a licensing authority may not suspend, revoke, or deny licensure to an individual who has received a deferred adjudication *unless* the individual is charged with:

(1) an offense under Article 62.001(5) of the Code of Criminal Procedure (requiring registration as a sex offender); or

(2) another offense for which the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for licensure; or

(3) another offense for which conviction of the offense would make the person ineligible for licensure by operation of law; and

the agency determines that the individual may pose a continued threat to public safety or the employment of the individual in the licensed occupation would create a situation in which the individual would have an opportunity to repeat the prohibited conduct.

The provisions of this policy shall be applied consistently with these statutory requirements.

AN ACT

relating to certain actions taken by certain licensing authorities regarding a license holder or applicant who received deferred adjudication for certain offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.356, Occupations Code, is amended to read as follows:

Sec. 51.356. DEFERRED ADJUDICATION; LICENSE SUSPENSION, LICENSE REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE. (a) The commission may deny, suspend, revoke, or refuse to renew a license or other authorization issued by a program regulated by the department if:

(1) [~~the commission determines that a deferred adjudication makes~~ the person holding or seeking the license received deferred adjudication for:

(A) any offense described by Article 62.001(5), Code of Criminal Procedure; or

(B) an offense other than an offense described by Paragraph (A) if:

(i) the person has not completed the period of deferred adjudication or the person completed the period of deferred adjudication less than five years before the date the person applied for the license; or

(ii) a conviction for the offense would

1 make the person ineligible for the license by operation of law; and
2 (2) the commission determines that the deferred
3 adjudication makes the person unfit for the license.

4 (b) In making a determination under Subsection (a)(2)
5 [~~a~~], the commission shall consider the factors set forth in
6 Sections 53.022 and 53.023 and the guidelines issued by the
7 department under Section 53.025.

8 **SECTION 2.** Section 53.021(d), Occupations Code, is amended
9 to read as follows:

10 (d) A licensing authority may consider a person to have been
11 convicted of an offense for purposes of this section regardless of
12 whether the proceedings were dismissed and the person was
13 discharged as described by Subsection (c) if:

14 (1) the person was charged with:
15 (A) any offense described by Article 62.001(5),
16 Code of Criminal Procedure; or

17 (B) an offense other than an offense described by
18 Paragraph (A) if:

19 (i) the person has not completed the period
20 of supervision or the person completed the period of supervision
21 less than five years before the date the person applied for the
22 license; or

23 (ii) a conviction for the offense would
24 make the person ineligible for the license by operation of law; and

25 (2) [7] after consideration of the factors described
26 by Sections 53.022 and 53.023(a), the licensing authority
27 determines that:

1 (A) [~~(1)~~] the person may pose a continued threat
2 to public safety; or

3 (B) [~~(2)~~] employment of the person in the
4 licensed occupation would create a situation in which the person
5 has an opportunity to repeat the prohibited conduct.

6 SECTION 3. The change in law made by this Act applies to an
7 application for a license or other authorization that is filed, or a
8 proceeding to revoke or suspend a license or authorization that is
9 commenced, on or after the effective date of this Act.

10 SECTION 4. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 1659 was passed by the House on May 8, 2013, by the following vote: Yeas 144, Nays 3, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1659 on May 24, 2013, by the following vote: Yeas 143, Nays 0, 3 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1659 was passed by the Senate, with amendments, on May 22, 2013, by the following vote: Yeas 21, Nays 10.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to certain actions taken by certain licensing authorities regarding a license holder or applicant who has been convicted of a Class C misdemeanor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 53.021, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Subsection (a) does not apply to a person who has been convicted only of an offense punishable as a Class C misdemeanor unless:

(1) the person is an applicant for or the holder of a license that authorizes the person to possess a firearm; and

(2) the offense for which the person was convicted is a misdemeanor crime of domestic violence as that term is defined by 18 U.S.C. Section 921.

SECTION 2. The change in law made by this Act applies to an application for, or a disciplinary proceeding regarding, a license or other authorization that is pending with a licensing authority on the effective date of this Act or an application filed or a disciplinary proceeding commenced on or after that date.

SECTION 3. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 798 was passed by the House on April 25, 2013, by the following vote: Yeas 136, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 798 on May 16, 2013, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 798 was passed by the Senate, with amendments, on May 15, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor