

## Consideration and Review of Proposed Amendments to the Board's Minor Criminal History Policy

**Background:** Attachment "A" contains the Board's current Minor Criminal History Policy. This policy is utilized by Staff in evaluating the effect of a *single* minor criminal incident or minor criminal behavior on an individual's licensure. The policy applies to licensees, as well as applicants and petitioners for licensure.

The policy was last amended in April 2014. Since that time, Staff has identified several changes that are necessary for consistency with the provisions of the Texas Penal Code. These proposed changes will also assist Staff in its current review process. Staff's proposed changes are attached in Attachment "B".

First, *Shoplifting* has been eliminated as a separate offense in the Penal Code, and has instead, been consolidated into the offense of *Theft*. (See Penal Code §31.02). As such, a separate reference to *Shoplifting* in the Board's policy is unnecessary. Second, the Penal Code has been amended with respect to the dollar value associated with Class B or C misdemeanor *Theft*. [See Penal Code §31.03(e)]. The Penal Code currently categorizes *Theft* with a value of less than \$100 as a Class C misdemeanor. The Penal Code currently categorizes *Theft* with a value of more than \$100, but less than \$750, as a Class B misdemeanor. The proposed changes to the Board's policy are consistent with these amendments to the Penal Code so that *Theft* Class B and C misdemeanors may be properly considered under the Board's policy. These changes also apply to the offense of *Theft by Check*. Although *Theft by Check* is recognized separately by the Penal Code, it is considered in the same statutory scheme as *Theft* for purposes of misdemeanor designation and punishment. (See Penal Code §31.06 and §31.03).

The proposed changes also address the misdemeanor offense of *Criminal Mischief*. The Penal Code currently categorizes *Criminal Mischief* with a pecuniary loss of less than \$100 as a Class C misdemeanor. The Penal Code currently categorizes *Criminal Mischief* with a pecuniary loss of \$100 or more, but less than \$750, as a Class B misdemeanor. (See Penal Code §28.03). The proposed changes to the Board's policy are consistent with these provisions of the Penal Code so that *Criminal Mischief* Class B and C misdemeanors may be properly considered under the Board's policy.

The remainder of the proposed changes clarify that the Board's policy applies to licensees, as well as applicants and petitioners for licensure.

**Board Action:** Move to approve the proposed changes to the Board's Minor Criminal History Policy, as set out in Attachment "B", effective immediately.

## **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 **generally appropriate to close the matter without action against the individual.**

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 learns 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

The Board has the authority to take action against an individual for the non-disclosure of any criminal offense in violation of the Occupations Code §301.452(b)(2), regardless of when the offense occurred. The Board has determined, however, that it will not take action against an individual for non-disclosure of a criminal offense if the non-disclosure occurred more than five years ago and the individual would not be subject to discipline for the criminal offense itself under this policy. This policy, however, does not prevent the Board from taking disciplinary action against an applicant, petitioner or licensee for the non-disclosure of a criminal offense in violation of the Occupations Code §301.452(b)(2), regardless of when the offense occurred, if the non-disclosure is associated with other violations or evidences a pattern of conduct or repetitive, fraudulent, or intentional behavior.

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
- (4) 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.

## Attachment "B"

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

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- ~~6.~~ [7:] One misdemeanor Criminal Mischief less than \$750
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- ~~8.~~ [9:] One misdemeanor Criminal Trespass
- ~~9.~~ [10:] One misdemeanor Disorderly Conduct
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