

**MASSACHUSETTS BOARD OF REGISTRATION OF
COSMETOLOGY AND BARBERING**

**POLICY BULLETIN: REVIEW OF APPLICANTS WITH CRIMINAL HISTORY OR
PENDING CRIMINAL CHARGES**

June 6, 2017

Amended December 11, 2018

The Board of Registration of Cosmetology and Barbering has adopted the following policy guidelines describing when an applicant who has criminal convictions or pending criminal charges must receive further review by the Board and/or appear before the Board during the application process and when registering to provide Mobile Services. In this Policy Bulletin, "Mobile Services" means those practices within the definitions of aesthetics, barbering, cosmetology, hairdressing and manicuring that the Board authorizes to be provided at Remote Locations and in Mobile Shops. "Mobile Registration" means the registration required by the Board before providing Mobile Services.

To assist applicants in understanding when a criminal conviction may lead to a license denial, the Board has created this policy, which explains when a conviction rises to the level where it could lead to a license denial. Pursuant to Chapter 69 of the Acts of 2018 (An Act Relative to Criminal Justice Reform), the Board is required to provide "a list of the specific criminal convictions that are directly related to the duties and responsibilities for the licensed occupation that would disqualify an applicant from eligibility for a license." The Board has determined that no single conviction, on its own, would disqualify an applicant from being eligible for a license. However, other factors, such as a conviction being very recent, the applicant having a history of other criminal convictions, or the conviction involving aggravating factors (such as a crime being caused by substance abuse issues, the crime being part of a pattern of violence, the matter leading to a level 3 Sex Offender designation, etc.) might justify denying a license to an otherwise eligible candidate. As a result any conviction could lead to a license denial. This includes ALL the crimes listed on the Master Crime List issued by the Massachusetts Sentencing Commission and found at this link:

<https://www.mass.gov/files/documents/2016/08/my/mastercrimelist.pdf>

Purpose: To provide guidance to applicants, registrants and Board staff members regarding the type, age and disposition of conviction and pending criminal case information requiring an applicant or registrant to receive further review and/or appear before the Board to determine eligibility for licensure or Mobile Registration.

Nothing stated in this policy prohibits the Board from denying licensure or approval for Mobile Registration or imposing other disciplinary action against any applicant or registrant who makes a false statement, submits false information, or refuses to provide complete information in response to a question in an application for licensure or mobile registration.

Discussion: The historical purpose of licensure is to preserve the public health, safety and welfare by ensuring that individuals who obtain licensure will practice in a manner that does not present an unsafe risk to the public. See, Levy v. Board of Registration & Discipline in Medicine, 378 Mass. 519, 527–528 (1979). Consistent with this objective, General Laws Chapter 112, Section 61(4) authorizes the Board to take disciplinary action up to and including revocation of licensure when a licensee has been convicted of a criminal offense which is reasonably related to the practice of a profession licensed by the Board. This statutory provision evinces clear Legislative intent that the Board has the authority to deny an individual a license to practice in the Commonwealth if that individual has committed a crime reasonably related to the services he or she will perform as a licensee.

Accordingly, the Board has determined that the existence of certain publicly accessible criminal convictions or pending criminal cases, based on the nature and the disposition of the offense, should not bar a candidate from initial licensure or from performing Mobile Services. Other convictions or pending criminal cases, however, require closer examination by the Board in order to determine an applicant's suitability for licensure or for Mobile Registration, in which services may be practiced in private locations rather than salons open to the public. Under those circumstances, the Board would require the candidate to provide supplemental documentation and/or appear before the Board to discuss such issues as the nature of the offense, when the incident occurred, and the consequences of the offense. This supplemental documentation and/or personal appearance is intended to assist the Board in determining whether the applicant is suitable for licensure or Mobile Registration.

Policy: The Executive Director, Associate Executive Director and Board Counsel are authorized to review the records of criminal convictions and pending criminal cases, including Criminal Offender Record Information or "CORI" received from the Department of Criminal Justice Information Services, to determine whether further documentation or an appearance before the Board is necessary for applicants and registrants.

An application for an initial license must receive further review before the Board if the applicant or registrant has been convicted of, or has been charged with, any form of homicide or any crime listed under the definition of "sex offense," "sex offense involving a child," or "sexually violent offense" under the Sex Offender Registry Law, General Laws c. 6, s. 178C, by any court.

A registration for approval to provide Mobile Services must receive review before the Board if the records of criminal convictions indicate the existence of any criminal convictions except convictions for misdemeanor motor vehicle offenses that did not involve alcohol and did not result in the applicant serving any period of incarceration or probation.

The above-mentioned crimes are not intended to be comprehensive or to cover extenuating circumstances. Consequently, in addition to the above, the Executive Director, Associate Executive Director and Board Counsel are authorized to require Board review and/or an appearance before the Board of any applicant or registrant whose record before the Board indicates a conviction or pending charge which:

- occurred while the applicant or registrant was operating a licensed shop or school, or practicing as a licensee; or
- involved an act of violence against a government official other than resisting arrest.

Unless otherwise provided by law, a criminal record will not automatically disqualify a license applicant or registrant for Mobile Services. Rather, determinations of suitability based on CORI will be made consistent with this Policy, the Division of Professional Licensure's Policy for the Handling and Evaluation of CORI Records, and any applicable laws or regulations.

Board Review: When considering whether an applicant is suitable for licensure or registration for Mobile Services, the Board will evaluate the following factors:

- (a) The requirements of public protection;
- (b) Relationship between the practice of the licensed profession and public protection;
- (c) Time since the conviction;
- (d) Age of the applicant/licensee/registrant at the time of the offense(s);
- (e) Seriousness and specific circumstances of the offense(s);
- (f) The number of offenses;
- (g) Whether the applicant/licensee/registrant has pending charges;
- (h) Any relevant evidence of rehabilitation or lack thereof;
- (i) Submission of false information on an application for licensure or on a Mobile Registration, and/or failure to provide required notice of new information;
- (j) Whether the applicant or registrant is currently classified as a Sex Offender by the Sex Offender Registry Board and if so, the applicant's or registrant's level of classification and compliance with applicable laws; and
- (k) Any other relevant information, including information submitted by the applicant/licensee/registrant or requested by the Board.

After review of the above factors, the Board may, in its discretion, deny the applicant's application or Mobile Registration, offer the applicant a conditional license or registration in lieu of denial, or may take any other action permitted by law.

In cases where the Board votes to deny an application or Mobile Registration, the Board will notify the applicant in writing of the reasons for its decision and the procedures for requesting reconsideration of the Board's decision. This includes the right to challenge the accuracy of the CORI report used to deny the application.

The denial will outline the applicant's or registrant's right to request a hearing limited to the Board's rationale for the denial. This must include requiring the applicant or registrant to file, in writing, a request for a hearing within twenty-one (21) days of the date of the denial letter (or any amendment thereof) and must notify the applicant that this request must specifically refute the facts upon which the Board has based its decision.

A dispute as to whether a crime is reasonably related to the practice of the profession shall be grounds for a hearing. If the Board denies an applicant or registrant a hearing, the Board will notify the applicant of their appellate rights.

If a licensee, applicant or registrant has a question concerning this policy, they may call the Board at 617-727-9940, email the Board at cosmetologyandbarberingboard@mass.gov, or send mail to the following address:

Executive Director
Board of Registration of Cosmetology and Barbering
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