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**MASSACHUSETTS BOARD OF REGISTRATION OF MASSAGE THERAPY  
POLICY BULLETIN REGARDING APPLICANTS WITH CRIMINAL  
CONVICTIONS OR PENDING CRIMINAL CHARGES**

The Board of Registration of Massage Therapy voted on September 17, 2020, to adopt the following policy guideline on applicants with criminal convictions or pending criminal charges. Policy guidelines may be amended by the Board at any time.

Purpose: This policy describes the type of convictions that disqualify an applicant from licensure as a massage therapist under the licensing laws and Board regulations, and the type of convictions that may result in a denial of an application for licensure for failure to satisfy the good moral character requirement.

**I. CRIMES THAT DISQUALIFY AN APPLICANT FROM LICENSURE:**

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 massage therapy licensing statute, G.L. c. 112, s. 229(a)(6), disqualifies from licensure any applicant who has been “convicted in any jurisdiction of [a] sexually-related crime or a crime involving moral turpitude for the 10 years immediately before the date of application.” The Board interprets the term “sexually-related” crime to include, but not be limited to, the following:

- prostitution;
- indecent assault and battery on a child under 14;
- indecent assault and battery on a mentally retarded person;
- indecent assault and battery on a person age 14 or over;
- rape;
- rape of a child under 16 with force;
- rape and abuse of a child;
- assault with intent to commit rape;
- assault of a child with intent to commit rape;
- kidnapping of a child;
- enticing a child under the age of 16 for the purposes of committing a crime;
- enticing away a person for prostitution or sexual intercourse;
- drugging persons for sexual intercourse;
- inducing a minor into prostitution;
- living off or sharing earnings of a minor prostitute;
- second and subsequent conviction for open and gross lewdness and lascivious behavior,
- incestuous marriage or intercourse;

- disseminating to a minor matter harmful to a minor;
- posing or exhibiting a child in a state of nudity;
- dissemination of visual material of a child in a state of nudity or sexual conduct;
- possession of child pornography;
- unnatural and lascivious acts with a child under 16;
- aggravated rape; and
- any attempt to commit a violation of any of the aforementioned sections pursuant to section 6 of said chapter 274 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.
- aggravated indecent assault and battery on a child under 14 (G.L. c.265, s.13B1/2) and a repeat offense (G.L. c.265, s.13B3/4)
- aggravated rape of a child under 16 with Force (G.L. c.265, s.22B) and repeat offense (G.L. c.265, s.22C)
- aggravated rape and abuse of a child (G.L. c.265, s.23A) and repeat offense (G.L. c.265, s.23B)
- enticing a child under 18 via electronic communication to engage in prostitution, human trafficking, or commercial sexual activity (G.L. c.265, s. 26)
- trafficking of persons for sexual servitude (G.L. c.265, s. 50)
- trafficking of persons for sexual servitude upon a person under 18 years of age (G.L. c.265, s. 50(b))
- second or subsequent violation of human trafficking for sexual servitude (G.L. c.265, s. 52)
- any crime(s) that have resulted in the individual being currently classified as a Level 2 or Level 3 Sex Offender by the Massachusetts Sexual Offender Registry Board.

In addition to the above-listed crimes, the Board retains discretion to determine that other crimes based on their circumstances are “sexually-related” for the purposes of the licensing statute. Any individual convicted of a “sexually-related” crime within 10 years immediately before the date of application is disqualified from licensure as a massage therapist pursuant to the licensing law.

Furthermore, the licensing law states that massage therapy applicants must not have been convicted of a crime involving moral turpitude for the 10 years immediately before the date of application. Any applicant who cannot meet this requirement is not eligible for licensure as a massage therapist. A crime that involves moral turpitude is one that involves baseness, vileness or depravity in the private and social duties which an individual owes to others or society in general. Courts have recognized a wide array of crimes to be ones of moral turpitude, including stealing, fraud, perjury, and crimes resulting in harm, threat or failure to protect another individual. Among the tests to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind.

## II. CRIMES THAT COULD RESULT IN DENIAL OF LICENSURE AND THEREFORE MUST BE REVIEWED BY THE BOARD

Similarly, any conviction which demonstrates a lack of good moral character could also lead to license denial. In determining whether one or more convictions constitutes evidence of a lack of moral character, the Board evaluates relevant factors, such as the nature of the conviction, the conviction being very recent, the applicant having a history of other criminal convictions or misconduct, 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 2 or 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>

In order to determine qualification for licensure, the Board has become certified by the Massachusetts Department of Criminal Justice Information Services (DCJIS) for access to all conviction and pending criminal case data for all candidates for initial licensure. The Board has authorized the Executive Director, in conjunction with Board Counsel, to review the records of criminal convictions and pending criminal cases received from DCJIS or out-of-state sources to determine whether review of the application or the applicant's appearance before the Board is necessary. In doing so, the Executive Director and Board Counsel shall act in a manner consistent with the following guidelines:

An applicant must be reviewed and/or appear at a Board meeting where:

1. The applicant has been convicted of a sexually-related offense more than 10 years ago.<sup>1</sup>
2. The applicant is currently classified as a Level 2 or Level 3 Sex Offender by the Massachusetts Sexual Offender Registry Board.
3. The applicant has been convicted of an offense, whenever it occurred, that resulted in a term of incarceration of more than three (3) years.
4. The applicant has been convicted of a violent felony or crime of moral turpitude.
5. The applicant has been convicted of an offense in the last ten (10) years that resulted in a term of incarceration of more than thirty days.
6. The applicant has been convicted of any felony within the past ten years.
7. The applicant has been convicted of a misdemeanor crime of moral turpitude within the past five years. In general, a single conviction of shoplifting, disorderly conduct, and first time driving under the influence would not be considered to be crimes of moral turpitude by the Board and can be approved by staff, unless they fall within any of the other categories requiring Board review (e.g. resulted in incarceration of more than thirty days).

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<sup>1</sup> As discussed in Section I, applicants who have been convicted of a sexually-related offense in the past ten years are automatically disqualified from licensure and therefore their applications will be denied without an appearance before the Board.

8. The applicant has a pending criminal case concerning an open felony criminal charge, not including motor vehicle operation related offenses, for which a disposition has not yet been entered.
9. The applicant was convicted of a crime after the applicant was licensed in any jurisdiction as a massage therapist.
10. The applicant has been convicted or has a pending criminal case that relates to fraudulent activities in his or her professional and/or business practice.
11. The applicant has failed to disclose a criminal conviction and such conviction is not a misdemeanor that occurred more than 10 years ago. In such instances, Board staff will request a statement explaining the reasons for the non-disclosure prior to Board review.

In addition to the above, the Executive Director or Board Counsel is authorized to require Board review and/or an appearance before the Board of any applicant whose record contains any conviction or pending charge that the Executive Director or Board Counsel believes the Board should review. In evaluating whether an appearance is necessary, the Executive Director and Board Counsel will consider multiple factors, including but not limited to, whether the applicant has been convicted of an offense that involved harm to another person, fraud, dishonesty or deceit or an offense that calls into question the applicant's ability to practice massage with a reasonable degree of skill and safety and in accordance with accepted standards of sound professional practice.

**The Executive Director may, after consult with Board Counsel, approve for licensure any applicant whose conviction or pending criminal charge does not fall into any of the above-mentioned categories requiring Board review.** For example, the Executive Director may approve for licensure an applicant who has a single driving under the influence or shoplifting conviction, which did not result in incarceration for a period of more than thirty days and did not occur after licensure as a massage therapist.

### III. When Board Review is required, the Board will evaluate as follows:

The Board follows the Division of Professional Licensure's Policy Bulletin on the Handling and Evaluation of CORI Records ("DPL CORI Policy") as amended in September, 2015, in evaluating criminal convictions and pending criminal case information to determine an applicant's suitability for licensure. Factors that the Board may review when determining suitability for licensure are set forth in Section VII of the DPL CORI policy. In addition to those factors, individuals currently classified as Level 2 or Level 3 sex offenders are presumed to be not suitable for licensure as a Massage Therapist.