

**MASSACHUSETTS BOARD OF REGISTRATION OF CHIROPRACTORS
GUIDELINES REGARDING CONVICTION AND PENDING CRIMINAL CASE DATA
REGARDING APPLICANTS FOR LICENSURE**

Adopted March 4, 2021

The following guidelines shall be utilized by the Board of Registration of Chiropractors ("Board") for the purpose of determining eligibility to seek licensure where an applicant has a record of criminal convictions or pending criminal cases. These guidelines shall be deemed to be in addition to and in harmony with any requirements by Division of Professional Licensure policy and/or regulations of the Department of Criminal Justice Information Services.

Due to the need for the Board to ensure its decisions are not arbitrary or capricious, the provisions of these guidelines shall be deemed to override any past licensing decisions or other past precedent of the Board to the contrary.

To assist applicants in understanding when a crime 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 result in rendering an applicant disqualified 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>

These guidelines shall govern the review of records of criminal convictions and pending criminal cases received from the Massachusetts Department of Criminal Justice Information Services and other sources to determine whether an applicant is eligible for a license or a licensee is subject to disciplinary action based on criminal conduct. In conjunction with these guidelines, the Executive Director, Associate Executive Director, and Board Counsel ("Board staff") are authorized to review criminal matters on behalf of the Board and to execute these guidelines. These guidelines are not intended to prevent the Board from taking any action it deems appropriate under the applicable law.

A. Board review standards and Staff screening

1. Board appearance required. In general, an applicant whose criminal record falls into one of the following categories must appear at a Board meeting for a determination as to whether or not they may seek licensure in light of their record:

- (a) The applicant's record of convictions includes any felony conviction(s) less than ten (10) years of age from the date of application;
 - (b) The applicant's record of convictions includes any misdemeanor conviction(s) less than five (5) years of age from the date of application;
OR
 - (c) The applicant's record contains a sexual crime, regardless of age.
2. Board appearance not required. Notwithstanding the above rules, the following matters shall be approved by Board staff without need of a Board appearance:
- (a) Convictions falling outside of the criteria A1, above.
 - (b) Records showing only a single misdemeanor (including open charges) meeting the following criteria:
 - 1) A single instance of operating under the influence of liquor;
 - 2) A single instance of assault and/or battery so long as there are no aggravating factors; or
 - 3) The following motor vehicle related charges: attaching wrong plates, compulsory insurance violations, and operating a vehicle negligently.
 - (c) The applicant's record contains an open misdemeanor charge (or charges) for which a disposition has not yet been entered in which:
 - 1) The applicant does not have a criminal record reflecting other charges which would have mandated a Board appearance; and,
 - 2) The initial court appearance associated with the pending charge(s) occurred more than ten years from the time of application.
3. Sexual Crimes – Special Rules

Due to the severe nature of sexual crimes as well as concern that sexual offenders may reoffend, the Commonwealth of Massachusetts has enacted laws requiring sexual offenders to be reviewed and classified by a specialized state agency, the Sex Offender Registry Board ("SORB"). Hence, the Board has determined that applicants who are subject to classification by SORB require heightened scrutiny before being allowed to obtain a license. Therefore, the following rules shall apply to individuals convicted of a sexual crime:

- (a) Level 3 Sex Offenders – Due to a determination from the SORB that they are a high risk of reoffense, level 3 sex offenders are not eligible for licensure. Individuals with such a classification must seek and obtain a reclassification from the SORB to a lower level prior to seeking licensure.

- (b) Level 2 Sex Offenders – Due to a determination from the SORB that they are a moderate risk of reoffense, level 2 sex offenders must provide an evaluation from a Massachusetts licensed psychologist or psychiatrist stating that, based on their education, training, experience, and evaluation of the applicant and his/her record, the applicant has a low risk of reoffending and that they present very little risk to the community if allowed to practice in the chiropractic profession. Applicants who are unable to provide such documentation are not eligible for licensure; they will not be considered until they obtain this documentation or have been reclassified by the SORB to be a level 1 sex offender. Once the documentation has been obtained, they shall be subject to the standard screening requirements in these guidelines.
- (c) Level 1 Sex Offenders – Due to a determination by the SORB that they are a low risk of reoffense, level 1 sex offenders shall be subject to the standard screening requirements in these guidelines.
- (d) Unclassified Sex Offenders – Applicants who are not classified as sex offenders but who have been convicted of sexual crimes must report their status to the Board prior to being approved for licensure. Subject applicants who are unclassified due to not being required to be registered (and can produce documentation to that effect) shall be subject to the standard screening requirements in these guidelines. Subject applicants who have been convicted of a sexual crime and are unclassified pending the final determination of classification by the SORB must wait until they are assigned a classification level before being eligible for further Board review.

4. Rules for Pending Cases

Where an applicant's record reflects an open criminal charge which has not been adjudicated (aka not yet a conviction), the following shall apply:

- (a) The applicant may be approved if the record meets the criteria in paragraph 2, above; OR
- (b) The applicant's record shall be placed on hold for 90 days with notification to the applicant that the purpose of this hold is to allow the applicant to resolve the charges:
 - 1) Upon expiration of the 90 days, if the charges are still pending, the applicant's application will be returned as incomplete and encouraged to apply again when the charge(s) is/are resolved;
 - 2) The applicant may file a written petition to appear in front of the Board despite a pending charge. Said petition must indicate the following:
 - 1. That the court matter is not expected to be resolved in the near future; and

2. That the applicant agrees that they are able to discuss the pending matter, in complete detail, with the Board. Applicants are strongly encouraged to seek legal advice as statements made to the Board may be used in the pending criminal proceedings. If an applicant wishes to invoke legal rights not to self-incriminate themselves, they are advised to wait until their criminal matter is resolved prior to filing an application as the Board may draw an adverse inference that the information the applicant declines to provide the Board would have been against the applicant's interest

5. False Statements

For matters in which the applicant has made a false statement on his/her application for licensure regarding a criminal history, the application shall be denied by Board Staff for **SIX MONTHS**. Individuals so denied have the right to a limited adjudicatory hearing if they are able to contest the facts upon which this determination was made, as allowed by law. This denial period shall not apply to individuals whose record, in its entirety, solely consists of a single misdemeanor which occurred more than five years prior to the date of application.

B. Procedural Rules

1. All CORI reviews will occur in executive session, with applicant notification provided as required by law unless affirmatively waived by the applicant.
2. The following factors will be applied by the Board when analyzing an applicant's CORI at its meeting in order to determine whether to approve or deny a license application:
 - (a) The requirements of public protection
 - (b) Relationship between work done by chiropractors and public protection;
 - (c) Time since the conviction;
 - (d) Age of the applicant/licensee 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 has pending charges;
 - (h) Any relevant evidence of rehabilitation or lack thereof;
 - (i) Submission of false information on an application for licensure and/or

failure to provide required notification of new information;

(j) Any other relevant information, including information submitted by the applicant/licensee or requested by the Board.

3. Applicants indicating their CORI is inaccurate may be allowed to place their application on hold for up to six months while seeking to correct the CORI.
4. All denials must be issued in writing as soon as practicable after the decision to deny a license is made.
5. Denial letters must state the factual and legal reasons justifying the denial.
6. Unless the denial is to be permanent, denial letters shall specify when the applicant may file a new application for licensure.
7. The denial must outline the applicant's right to request a limited hearing on the Board's rationale for the denial. This must include requiring the applicant to file, in writing, a request for a hearing within fourteen (14) 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. If the applicant does this, they are entitled to a hearing, if they do not, they should be provided with a notice that their request is denied and notify them of their appellate rights.