

MASSACHUSETTS BOARD OF REGISTRATION OF SANITARIANS POLICY BULLETIN REGARDING APPLICANTS WITH CRIMINAL CONVICTIONS OR PENDING CRIMINAL CHARGES

The Board of Registration of Sanitarians voted on June 5, 2019 to update the following policy guidelines outlining when an applicant who has criminal convictions or pending criminal charges must receive further review by the Board and/or appear before the Board prior to receiving approval to sit for the licensing examination. These policy guidelines are intended as the Board's guidelines for eligibility for those applicants who have met the MINIMUM requirements to sit for examination but have been convicted of a felony or misdemeanor or have open criminal charges.

Purpose: To provide guidance to applicants and to Board staff members regarding the type, age and disposition of conviction and pending criminal case information requiring further review and/or the applicant's appearance before the Board to determine eligibility for examination required for registration as a sanitarian in the Commonwealth.

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 type of conviction, on its own, automatically disqualifies an applicant from obtaining a sanitarian license. However, relevant factors, such as the nature of the conviction, the 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>

The Board's Executive Director and Associate Executive Director are authorized, in conjunction with Board Counsel, to review the records of criminal convictions and pending criminal cases received from the Department of Criminal Justice Information Services ("DCJIS") to determine whether review or an appearance before the Board is necessary for an applicant for examination who has answered positively in response to the application question regarding the existence of past convictions or whose convictions were otherwise discovered despite the answer on the application. In determining if

review or appearance before the Board is necessary, 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 an offense, whenever it occurred, that resulted in a term of incarceration of more than three (3) years.
2. The applicant has been convicted of an offense in the last ten (10) years that resulted in a term of incarceration of 30 days or more.
3. The applicant has been convicted of any felony within ten (10) years of the application date.
4. The applicant has been convicted of more than 2 misdemeanor convictions within the past ten years.
5. 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.
6. The applicant has been convicted or has a pending criminal case that relates to fraudulent activities in his or her professional practice.
7. 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, Associate Executive Director and Board Counsel are 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 violence, fraud, dishonesty or deceit or an offense that calls into question the applicant's ability to practice as a sanitarian with a reasonable degree of skill and safety and in accordance with accepted standards of sound professional practice.

Discussion:

Under G.L. c. 13, § 52 and c. 112, § 87NN, the Board of Registration of Sanitarians is authorized to make rules and regulations as are necessary for the performance of its duties. Further, under G.L. c. 112, §61, the Board has authority to take disciplinary action up to and including revocation of licensure when a licensee has been convicted of a crime reasonably related to his or her practice as a sanitarian. It is the Board's position that conduct that warrants revocation of licensure also warrants denial of licensure if the conviction is known at the time the application is considered.

As stated in the "Policy Section" above, the Board has determined that the existence of certain criminal convictions or pending criminal cases, based on the nature and age of the

offense and the disposition of the offense, should not bar a candidate from licensure as a sanitarian in Massachusetts. However, other offenses, given their serious nature, recent age, or consequences, should require that a candidate who has been convicted of such offenses be reviewed or interviewed by the Board to determine suitability for licensure. The purpose of this review/interview is to determine that the candidate for licensure is suitable to hold a license and does not pose a risk of harm to the public.

Unless otherwise provided by law, factors considered in determining suitability may include, but not be limited to, the following:

- (a) Relevance of the record to the practice of a registered sanitarian;
- (b) The nature of the work to be performed;
- (c) Time since the conviction;
- (d) Age of the candidate at the time of the offense;
- (e) Seriousness and specific circumstances of the offense;
- (f) The number of offenses;
- (g) Whether the applicant has pending charges;
- (h) Any relevant evidence of rehabilitation or lack thereof; and
- (i) Any other relevant information, including information submitted by the candidate or requested by the organization.

After review of the above factors, the Board may, in its discretion, deny the applicant's application, offer the applicant a probationary licensure agreement in lieu of denial of licensure, or may take any other action permitted by law. The applicant is to be notified of the decision and the basis for it in a timely manner.

In cases where the Board votes to deny an application, the Board will notify the applicant 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 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.

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

Initially adopted: December 10, 2014

Updated: June 5, 2019