

Guideline on Criminal Conviction or Pending Criminal Charges

The Board of Registration of Dispensing Opticians ("the Board") voted at its meeting on October 5, 2016 to adopt the following Guideline. This guideline is intended as a protocol for the Board Staff to follow with regards to processing applications where the applicant has a criminal history.

Purpose:

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.

The purpose of this policy statement is to provide guidance to Board staff regarding the type, age, and disposition of conviction and pending criminal case information requiring further review and/or the licensee/applicant's appearance before the Board to determine eligibility for licensure.

Policy:

The 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 to determine whether review or an appearance before the Board is necessary for an applicant for an initial or an application for renewal of licensure who has answered positively in response to the question regarding the existence of past and/or recent convictions. In determining who must appear before the Board, the Executive Director and Board Counsel shall act in a manner consistent with the following guidelines:

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

- 1. The applicant/licensee 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/licensee 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/licensee has been convicted of any felony within ten (10) years of the application date.**
- 4. The applicant/licensee has been convicted of more than 2 misdemeanor convictions within the past ten years.**
- 5. The applicant/licensee 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/licensee has been convicted or has a pending criminal case that relates to fraudulent activities in his or her professional practice.**
- 7. The applicant/licensee has failed to disclose any conviction whenever it occurred. In such instances, Board staff will require a statement explaining the reasons for the non-disclosure prior to Board review and may allow the applicant to proceed without appearing before the Board if the convictions are not of the type identified in paragraphs 1 – 6.**

In addition to the above, the Executive Director, Associate Executive Director, and/or Board Counsel are authorized to require Board review and/or an appearance before the Board of any applicant/licensee 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/licensee has been convicted of an offense that involved fraud, dishonesty or deceit or an offense that calls into question the applicant's ability to be a Dispensing Optician with a reasonable degree of skill and safety and in accordance with accepted standards of sound professional practice.