

## **Applying for Licensure with a Conviction or Past Disciplinary Action? Here's What you Need to Know**

Applicants with a past conviction, or disciplinary action on another license, need to go through some extra steps in the review process when they apply for a license or registration with the Board of Behavioral Sciences (Board). This does not necessarily mean that the applicant won't get licensed or registered; many go on to either receive full licensure or registration or are granted a license or registration with certain probationary conditions to ensure public protection.

The reason for the review is that the Board is tasked with the protection of consumers in California. Therefore, the Board has the responsibility to make sure that all licensees and registrants, who are placed in a position of trust with their clients, are safe to practice.

*All links in this document may be accessed at <https://leginfo.legislature.ca.gov/faces/codes.xhtml>.*

### **1. Does the Board pre-screen potential applicants with criminal convictions before they apply?**

No. A determination regarding an applicant's eligibility to obtain a license will not be made prior to the submission of an application. Consequently, Board staff will not provide opinions about whether an applicant's specific criminal history will result in the approval or denial of an application.

### **2. What types of convictions must I disclose?**

You are not required to disclose any information regarding your criminal history. The Board will receive your Criminal Offender Record Information (CORI) from the California Department of Justice.

However, the Board may request additional information from you regarding your criminal history in order to determine if the crime was substantially related to your profession, or to determine your rehabilitation. Such information may help your case; however, disclosure is voluntary. Whether or not you choose to disclose such information will not be a factor in the decision of whether to issue a license; in the absence of further information from you, the Board will make its decision strictly on the information it has already obtained.

### **3. If I have a conviction, under what circumstances can my license be denied?**

The Board may only deny a license for an applicant convicted of a crime under the following circumstances:

- The applicant was convicted of a crime within the seven years preceding the date of application (with two exceptions as stated below); and
- That crime is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made

The above is true regardless of whether the applicant was incarcerated for that crime, or whether the applicant was convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application.

There are two exceptions to the seven-year limitation. Convictions for these types of crimes can lead to a denial regardless of age. They are as follows:

- A serious felony conviction. (See [Penal Code section 1192.7](#))
- A crime for which registration as a sex offender is required pursuant to [Penal Code section 290\(d\)\(2\) or \(3\)](#) (as effective January 1, 2021).

### **4. What if my conviction was expunged, or I otherwise have proved rehabilitation?**

There are certain circumstances where a conviction cannot be a basis for license denial, even if it occurred within the preceding seven years. They are as follows:

- You have obtained a certificate of rehabilitation under [Chapter 3.5 of Title 6 of Part 3 of the Penal Code](#);
- You have been granted clemency or a pardon by a state or federal executive;
- You have made a showing of rehabilitation under [Business and Professions Code section 482](#); or
- Your conviction was dismissed under Penal Code sections [1203.4](#), [1203.4a](#), [1203.41](#), [1203.42](#), or [1203.425](#) (or another state's equivalent).

Please be advised that even if a conviction was dismissed under Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 (or another state's equivalent), the Board may still have to go through the process of requesting and obtaining court documents to assess and ensure that the conviction was dismissed pursuant to Penal Code sections 1203.4, 1203.4a, 1203.42 or a comparable dismissal or expungement.

Applicants are not required to disclose any conviction or provide any documentation regarding any prior convictions. Applicants may voluntarily provide a certified certificate of rehabilitation or proof of dismissal with their application.

**5. What types of convictions will not be considered, even if it occurred within the preceding seven years?**

- Convictions prior to your 18<sup>th</sup> birthday, unless you were charged as an adult;
- Charges dismissed under section [1000.3](#) of the Penal Code;
- Convictions under sections [11357](#)(b), (c), (d), (e) or section [11360](#)(b) of the Health and Safety Code which are two (2) years or older;
- Traffic violations for which a fine of \$500 or less was imposed; and
- Infractions

**6. What if I was arrested, but I wasn't convicted of anything?**

The Board is not permitted to deny a license based on an arrest that resulted in an outcome other than a conviction. This includes arrests that resulted in an infraction, a citation, or a juvenile adjudication.

**7. If I have formal discipline from another licensing board, under what circumstances can my license be denied?**

The Board may only deny a license if the applicant was subject to formal discipline by a licensing board for professional misconduct that was substantially related to the profession within the past seven years.

However, a license cannot be denied based on formal discipline if it was for a conviction that was dismissed pursuant to Penal Code section [1203.4](#), [1203.4a](#), [1203.41](#) or [1203.42](#) (or another state's equivalent).

**8. What are my rights if my application is denied?**

If your application for registration or licensure is denied, the Board must notify you in writing. You have the right to appeal this decision. A denial letter will include the Board's procedure for appealing the denial.

**9. Can I see a copy of my conviction history? What if something on my history is incorrect?**

The law permits you to request a copy of your complete conviction history from the California Department of Justice (see [Penal Code sections 11120-11127](#)). You are also permitted to question its accuracy or completeness. Further information can be found [here](#) (access at <https://oag.ca.gov/fingerprints/record-review>).

**10. What does "substantially related" mean?**

Whenever the Board considers suspending, revoking, or denying, or taking disciplinary action against a license or registration due to a crime, professional misconduct, or act, it must first determine that the crime, professional misconduct, or act is substantially related to the qualifications, functions, or duties of the licensed profession.

A conviction or formal disciplinary action is “substantially related” to a profession if to a substantial degree, it evidences present or potential unfitness of the license holder to perform the functions authorized by the license in a manner that is consistent with public health, safety or welfare.

The Board must consider all of the following in making its determination:

- The nature and gravity of the offense;
- The number of years that have elapsed since the date of the offense; and
- The nature and duties of the profession.

If the Board determines that a crime, professional misconduct, or act is substantially related, it is then required to consider evidence of rehabilitation.

### **11. What is evidence of rehabilitation?**

The Board must always consider evidence of rehabilitation before denying, suspending, or revoking a license. Criteria the Board must consider when evaluating rehabilitation is outlined in [Business and Professions Code section 482](#), and also California Code of Regulations Title 16, sections [1813](#) and [1814](#) (*access regulation sections at <https://www.bbs.ca.gov/pdf/publications/lawsregs.pdf>*).

### **12. What types of evidence of rehabilitation should I submit to the Board?**

Each person’s case is unique and depends on a variety of factors, including, but not limited to, the nature and gravity of any act, professional misconduct, or crime, evidence of any subsequent acts, professional misconduct, or crime and the time period that has elapsed since their occurrence. For these reasons, it could be limiting or misleading to provide a checklist of exactly what is expected in order to demonstrate rehabilitation.

Instead, the Board recommends that each applicant reflect on what they have done personally to move forward, make amends, and improve themselves and their community. Common examples of the types of rehabilitation the Board has seen include the following:

- Letters of recommendation (from a supervisor, volunteer organization, pastor, colleague, etc.)
- Evidence of community service
- Evidence of participation in a support group
- Evidence of participation in a rehabilitation program or support group (i.e. Alcoholics Anonymous) (if applicable)
- Evidence of completion of subsequent coursework or degree programs
- Evidence of participating in psychotherapy

**13. Is there anything I can do to expedite the conviction review process because I have a job offer which requires a number or because I will lose my job unless I obtain a number?**

This situation occurs frequently. However, in order to be fair to all applicants, the Board reviews each case in the order it was received. Applicants may, however, voluntarily provide the following documents to help expedite the review process. Providing the documents is completely voluntary and is not a factor in the Board's decision to approve or deny an application.

- A written explanation detailing the circumstances surrounding each conviction.
- A copy of the arrest/incident report(s) for **each** conviction.
- A certified copy of the court documentation for **each** conviction. Court documentation submitted may include, but is not limited to, the criminal complaint, court minutes, sentencing, and probation order.
- Current proof of compliance with probation, which may include, but is not limited to, participation in or completion of any drug and/or alcohol, anger management, domestic violence, or theft programs; payment of fees, fines or restitution; or completion of community service.
- Additional evidence of mitigation including, but not limited to: letters of recommendation, proof of employment or volunteer work, completion or enrollment in school or training programs, etc.
- A certified document showing the date an applicant was released from incarceration for a conviction, if any.