

CONSIDERATION OF CRIMINAL CONVICTIONS IN LICENSURE DECISIONS

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WHEN ARE CRIMINAL CONVICTIONS CONSIDERED?

- Usually During Initial Licensure
- Sometimes During Renewal
- Almost Always for Disciplinary Action



GOOD MORAL CHARACTER

- Most Board statutes provide that applicants must have “good moral character” before obtaining licensure
 - GS 90-210.25(a) (BFS)
 - GS 90-278 (NHA)
 - GS 87.10 (GC)
 - GS 90-237 (Opticians)
 - GS 83A-7 (Architecture)



WHAT IS GOOD MORAL CHARACTER?

- A few Board statutes define Good Moral Character.
- Otherwise, the definition is established by case law.



WHAT IS GOOD MORAL CHARACTER?

For example:

"Good moral character" means such character as tends to assure the faithful discharge of the fiduciary duties of an architect to his client. Evidence of **lack of such character** shall include the willful commission of an offense justifying discipline under this Chapter, the practice of architecture in violation of this Chapter, or of the laws of another jurisdiction, or the **conviction of a felony**.

GS 83A-1(5) (Architecture)



WHAT IS GOOD MORAL CHARACTER?

- According to the NC Supreme Court:

It is something more than the absence of bad character. It is the good name which the applicant has acquired, or should have acquired, through association with his fellows. It means that he must have conducted himself as a man of upright character ordinarily would, should or does. Such character expresses itself, not in negatives nor in following the line of least resistance, but quite often in the will to do the unpleasant thing, if it is right, and the resolve not to do the pleasant thing, if it is wrong.

‘Character,’ said Mr. Erskine in the trial of Thomas Hardy for high treason, ‘is the slow-spreading influence of opinion arising from the deportment of a man in society, as a man’s deportment, good or bad, necessarily produces one circle without another and so extends itself till it unites in one general opinion.’ Even more is this true when the restoration of character . . . is the subject of consideration. It is then a matter of time and growth.

In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975) (quoting In re Farmer, 191 N.C. 235, 238, 131 S.E. 661, 663 (1926)).

USING CRIMINAL CONVICTION TO DETERMINE GOOD MORAL CHARACTER

- “[E]vidence of a criminal conviction has long been properly admitted and considered in hearings before [OLBs] in this and other jurisdictions to determine an applicant’s moral character.”
- “Evidence of a criminal conviction is not conclusive evidence of the applicant’s lack of good moral character, but it is sometimes evidence that can be considered by the Board.”

In re: Elkins, 308 N.C. 317,
323 302 S.E.2d 215, 218 (1983)



USING CRIMINAL CONVICTIONS TO DETERMINE GOOD MORAL CHARACTER

- “[W]hether a person is of a good moral character is seldom subject to proof by reference to one or two incidents. . . . Character thus encompasses a person’s past behavior. Therefore, in making a proper determination regarding an individual’s current moral character, the past behavior of that individual is an appropriate inquiry.”

In re Legg, 337 N.C. 628, 447 S.E.2d 353 (1994) (internal citations omitted).

Use of Criminal Convictions During Initial Licensure or Renewal

- GS 93B-8.1 – Use of Criminal History Records
 - Governs use of criminal convictions during initial licensure only
 - Applies when Board is authorized to deny a license on the basis of conviction of any crime or a crime involving fraud or moral turpitude
 - Became effective July 1, 2013
 - See Exhibit 1
- Some pre-existing Board statutes also direct the manner in which criminal convictions may be considered during the initial licensure/renewal process.



CONSIDERATION OF CRIMINAL CONVICTIONS DURING INITIAL LICENSURE OR RENEWAL

- GS 90-288.01 (NHA)
 - Applies to initial licensure or renewal
 - Defines crimes that bear on an applicant's fitness for licensure as a NHA
 - See Exhibit 2
- GS 90-171.48 (Nursing)
 - Applies to initial licensure, reinstatement, and active status
 - Defines crimes that bear on an applicant's fitness for licensure to practice nursing
 - See Exhibit 3



USE OF CRIMINAL CONVICTIONS DURING INITIAL LICENSURE OR RENEWAL

- GS 90-210.25B (BFS)
 - “The Board shall not issue or renew any licensure, permit, or registration to any person or entity who has been convicted of a sexual offense against a minor.”
 - If licensee is disciplined in another jurisdiction because of any other felony conviction or because of conduct related to fitness to practice, Board must impose same or more stringent discipline.

USE OF CRIMINAL CONVICTIONS WHEN IMPOSING DISCIPLINE

- Almost all Board may discipline licensees for certain types of criminal convictions



USE OF CRIMINAL CONVICTIONS WHEN IMPOSING DISCIPLINE

- Felony or crime involving fraud or moral turpitude.
GS 90-210.25(e) (BFS)
- Criminal offense showing
• professional unfitness.
• GS 90-285.1(3) (NHA)
- Crime indicating unfitness or incompetence to practice nursing or
that nurse has deceived or defrauded the public. GS 90-171.37
(Nursing)



USE OF CRIMINAL CONVICTIONS WHEN IMPOSING DISCIPLINE

- Crime involving fraud or moral turpitude. GS 90-249.1 (Opticians)
- Felony or any crime involving moral turpitude. GS 83A-15 (Architecture)
- Misdemeanor under Practice Act or any felony. GS 90B-11 (SWB)
- Any felony. GS 86A-18 (Barbers)



WHAT IS A CRIMINAL CONVICTION FOR PURPOSES OF DISCIPLINARY ACTION?

- When is a crime considered a crime?
- A felony is a crime which:
 - 1) was a felony at common law;
 - 2) is or may be punishable by death;
 - 3) is or may be punishable by imprisonment in the State's prison; or
 - 4) is denominated as a felony by statute.



Any other crime is a misdemeanor. GS 14-1.

WHAT IS A CRIMINAL CONVICTION FOR PURPOSES OF DISCIPLINARY ACTION?

- How should a Board handle a criminal conviction in another jurisdiction for an act or omission that does not constitute a crime in North Carolina?
 - Compare GS 93B-8.1 v. GS 90-288.01 v. GS 90-171.48
- Must a conviction be final in the sense that all rights to appeal are exhausted? Or is a jury verdict of guilt sufficient?

EXPUNCTION OF CRIMINAL CONVICTIONS

- GS 15A-145.4 - Expunction of records for first time offenders who are under 18 years of age at the time of the commission of a nonviolent felony

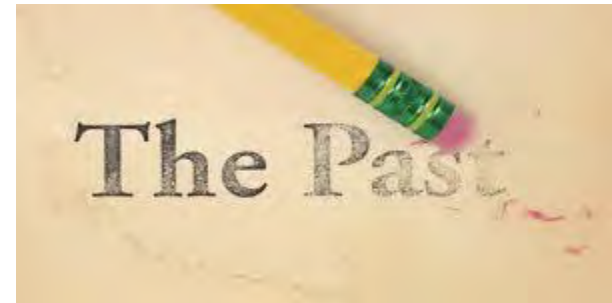


- GS 15A-145.5 – Expunction of certain misdemeanors and felonies; no age limit
- GS 15A-145.6 – Expunctions for certain defendants convicted of prostitution
- See Exhibit 5

EXPUNCTION OF CRIMINAL CONVICTIONS

Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose **administrative action** has been **vacated** by an occupational licensing board pursuant to an expunction under this section may then **reapply** for licensure and must **satisfy** the board's then **current education and preliminary licensing requirements** in order to obtain licensure.

GS 15A-145.4 & -145.5



EXPUNCTION OF CRIMINAL CONVICTIONS

Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. **The agency** shall also **reverse** any **administrative actions** taken against a person whose record is expunged under this section as a result of the charges or convictions expunged.

GS 15A-145.6

- What issues regarding expunction has your Board experienced?



CONCLUSION

- In Summary:
 - Review Board-specific statutes and rules
 - Review 93B-8.1
 - Review prior Board decisions for consistency

