Joint statement of the Department of Health and the Department of Health Professions on Impact of Criminal Convictions on Nursing Licensure or Certification and Employment in Virginia

INTRODUCTION

Certain criminal convictions may prevent licensure as a nurse or certification as a nurse aide in Virginia. Criminal convictions may also prohibit employment in certain health care settings.

This document provides information for persons interested in becoming a Certified Nurse Aide (C.N.A.), Licensed Practical Nurse (L.P.N.), or Registered Nurse (R.N.). It clarifies how convictions and other past history may affect the application process and subsequent licensure or certification by the Board of Nursing. It also clarifies the criminal convictions that prohibit employment in nursing home facilities, home care organizations, hospice programs, and assisted living facilities,[1] and identifies what is commonly referred to as "barrier crimes."

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[1] Individuals licensed or certified by the Board of Nursing may be eligible for employment in other health care settings, depending upon the hiring and employment practices of the particular employer.

I. IMPACT OF CRIMINAL CONVICTIONS ON BOARD OF NURSING LICENSURE AND CERTIFICATION

Criminal convictions can affect an individual during the licensure or certification application process and may affect an individual's employment options after licensure or certification by the Board.

Until an individual applies for licensure or certification, the Board of Nursing is unable to review, or consider for approval, an individual with a criminal conviction, history of action taken in another jurisdiction, or history of possible impairment. The Board has no jurisdiction until an application has been filed.

APPLICATION PROCESS FOR LICENSURE OR CERTIFICATION WITH THE BOARD OF NURSING

After successfully completing an approved nursing or nurse aide education program, the individual is eligible to apply for licensure or certification by the Virginia Board of Nursing of the Department of Health Professions (DHP).

Applicants seeking licensure as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) by examination**:** An application for licensure by examination is made directly to the Virginia Board of Nursing. Upon receipt of a completed application with appropriate application fee and an official transcript from the nursing education program, the Board determines and communicates eligibility for testing to the testing company that administers the NCLEX examination for licensure. The applicant must also submit a separate registration form and fee to the testing company that administers the exam for licensure. Both application for "licensure by exam" and the registration packet for the testing company are available from the Board of Nursing web site or by calling the Board office at (804) 367-4515.
. The applications, registration and information about testing may be obtained from the DHP - Board of Nursing website at: www.dhp.virginia.gov/nursing and choosing "Forms and Applications."

Applicants seeking certification as a Nurse Aide (CNA) by examination**:** The application for certification is made directly to Virginia's nurse aide testing service. Upon receipt of a completed application and appropriate fee, the testing service verifies eligibility and administers the National Nurse Aide Assessment Program (NNAAP) exam for certification by the Virginia Board of Nursing. The application for "certification by exam" and candidate handbook may be accessed directly from the DHP - Board of Nursing website at www.dhp.virginia.gov/nursing, and choosing NNAAP. They may also be obtained by calling the Board of Nursing-Nurse Aide Registry office at (804) 367-4569.

Applicants seeking licensure or certification by endorsement from another state: Endorsement applicants already licensed or certified in other jurisdictions must apply directly to the Virginia Board of Nursing, unless applicants reside and are licensed as a R.N. or L.P.N. in another state

that is a member of the Nurse Licensure Compact.[2] Applications with instructions can also be accessed from the DHP- Board of Nursing web site at www.dhp.virginia.gov/nursing and choosing "Forms and Applications."

BASIS FOR DENIAL OF LICENSURE OR CERTIFICATION

According to §54.1-3007 of the Code of Virginia, the Board of Nursing may refuse to admit a candidate to any examination, or refuse to issue a license or certificate, to any applicant with certain criminal convictions. Likewise, the Board may refuse licensure or certification to an applicant who uses alcohol or drugs to the extent that it renders the applicant unsafe to practice, or who has a mental or physical illness rendering the applicant unsafe to practice (referred to as a history of impairment).

Criminal convictions for ANY felony can cause an applicant to be denied nursing licensure or nurse aide certification.

Misdemeanor convictions involving moral turpitude may also prevent licensure or certification. Moral turpitude means convictions related to lying, cheating or stealing. Examples include, but are not limited to: reporting false information to the police, shoplifting or concealment of merchandise, petit larceny, welfare fraud, embezzlement, and writing worthless checks. While information must be gathered regarding all convictions, misdemeanor convictions other than those involving moral turpitude will not prevent an applicant from becoming a licensed nurse or C.N.A. However, if the misdemeanor conviction information also suggests a possible impairment issue, such as DUI and illegal drug possession convictions, then there still may be a basis for denial during the licensure or certification application process.

Each applicant is considered on an individual basis. There are NO criminal convictions or impairments that are an absolute bar to nursing licensure or nurse aide certification.

ADDITIONAL INFORMATION NEEDED REGARDING CRIMINAL CONVICTIONS, PAST ACTIONS, OR POSSIBLE IMPAIRMENTS

Applications for licensure and certification include questions about the applicant's history, specifically:

1. Any and all criminal convictions ever received;
2. Any past action taken against the applicant in another state or jurisdiction, including denial of licensure or certification in another state or jurisdiction; and
3. Any mental or physical illness, or chemical dependency condition that could interfere with the applicant's ability to practice.

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[2] See § 54.1-3030 et.al. of the Code of Virginia for laws related to the Nurse Licensure Compact., which Virginia began participating in on January 1, 2005. The Compact allows nurses licensed and residing in another Compact state to practice nursing in Virginia on a multi-state privilege to practice without obtaining additional licensure here. However, if the applicant is moving to Virginia and declares Virginia as the primary state of residency, licensure must be obtained here and the prior Compact state license will be invalidated. For a current list of states in the Compact, go to http://www.ncsbn.org/nlc/rnlpvncompact_mutual_recognition_state.asp .

Indicating "yes" to any questions about convictions, past actions, or possible impairment does not mean the application will be denied. It means more information must be gathered and considered before a decision can be made, which delays the usual application and testing process. Sometimes an administrative proceeding is required before a decision regarding the application can be made. The Board of Nursing has the ultimate authority to approve an applicant for testing and subsequent licensure or certification, or to deny approval.

The following information will be requested from an applicant with a criminal conviction:

- A certified copy of all conviction orders (obtained from the courthouse of record);
- Evidence that all court ordered requirements were met (i.e., letter from the probation officer if on supervised probation, paid fines and restitution, etc.);
- A letter from the applicant explaining the factual circumstances leading to the criminal offense(s); and
- Letters from employers concerning work performance (specifically from nursing related employers, if possible).

The following information will be requested from the applicant with past disciplinary action or licensure/certification denial in another state:

- A certified copy of the Order for disciplinary action or denial from the other state licensing entity; and certified copy of any subsequent actions (i.e. reinstatement), if applicable;
- A letter from the applicant explaining the factual circumstances leading to the action or denial; and
- Letters from employers concerning work performance (nursing related preferred) since action.

The following information may be requested from applicants with a possible impairment:

- Evidence of any past treatment (i.e., discharge summary from outpatient treatment and inpatient hospitalizations);
- A letter from the applicant's current treating healthcare provider(s) indicating diagnosis, treatment regimen, compliance with treatment, and ability to practice safely;
- A letter from the applicant explaining the factual circumstances of condition or impairment and addressing ongoing efforts to function safely (including efforts to remain compliant with treatment, maintain sobriety, attendance at AA/NA meetings, etc.); and
- Letters from employers concerning work performance (specifically from nursing related employers, if possible).

NOTE: Some applicants may be eligible for the Health Practitioner's Monitoring Program (HPMP), which is a monitoring program for persons with impairments due to chemical dependency, mental health or physical disabilities. Willingness to participate in the HPMP is information the Board of Nursing will consider during the review process for applicants with a criminal conviction history related to impairment or a history of impairment alone. Information about the Virginia HPMP may be obtained directly from the DHP homepage at www.dhp.virginia.gov.

Once the Board of Nursing has received the necessary and relevant additional information, the application will be considered. Some applicants may be approved based on review of the documentation provided. Other applicants may be required to meet with Board of Nursing representative(s) for an informal fact finding conference to consider the application. After the informal fact-finding conference, the application may be: i) approved, ii) approved with conditions or terms, or iii) denied. The Board will notify the testing company directly of all applicants approved so that testing may be scheduled. Upon notification of successful completion of the licensure or certification exam, the Board of Nursing will license or certify the individual based on the Board's Order, including any terms imposed for practice.

> NOTE: Failure to reveal criminal convictions, past disciplinary actions, and/or possible impairment issues on any application for licensure or certification is grounds for disciplinary action by the Board of Nursing, even after the license or certificate has been issued. It is considered to be "fraud or deceit in procuring or attempting to procure a license," and a basis for disciplinary action that is separate from the underlying conviction, past action, or impairment issue once discovered. Possible disciplinary actions that may be taken range from reprimand to revocation of a license or certificate.

FOLLOWING LICENSURE OR CERTIFICATION

Criminal convictions and other actions can also affect an individual already licensed as a nurse or certified as a nurse aide by the Board of Nursing. Any felony conviction, court adjudication of incompetence, or suspension or revocation of a license or certificate held in another state will result in a "mandatory suspension" of the individual's license, multi-state privilege, or certificate to practice in Virginia. This is a nondiscretionary action taken by the Director of DHP, rather than the Board of Nursing, according to § 54.1-2409 of the Code of Virginia. The mandatory suspension remains in effect until the individual applies for reinstatement and appears at a formal hearing before at least a panel of the Board of Nursing and demonstrates sufficient evidence that he or she is safe and competent to return to practice. At the formal hearing, three quarters of the Board members present must agree to reinstate the individual to practice in order for the license or certificate to be restored.

II. CRIMINAL CONVICTIONS AND EMPLOYMENT IN NURSING FACILITIES, HOME CARE, HOSPICE AND ASSISTED LIVING FACILITIES[3]

According to §§32.1-126.01 and 32.1-162.9:1 of Title 32.1 and §§ 63.2-1719 and 63.2-1720 of Title 63.2 of the Code of Virginia, persons with certain criminal convictions are prohibited from employment in nursing facilities, home care organizations, hospice programs, or assisted living

[3] Individuals licensed or certified by the Board of Nursing may be eligible for employment in other health care settings, depending upon the hiring and employment practices of the particular employer.

facilities, whether or not the person is licensed or certified by the Board of Nursing. These convictions are commonly known as "barrier crimes" to employment.

The law requires that owners/operators of nursing facilities, home care organizations, hospice programs, and assisted living facilities obtain a criminal record background check on each new hire within 30 days of their employment. The law requires that these background checks be obtained using the Central Criminal Records Exchange of the Virginia Department of State Police.

Generally, criminal convictions for offenses involving abuse or neglect disqualify an applicant. See a listing of the "barrier" crimes that prevent employment in a nursing facility, home care organization, hospice program or assisted living facility in the Appendix beginning on page 9.

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CONVICTIONS THAT DO NOT DISQUALIFY AN APPLICANT FROM EMPLOYMENT

Under Virginia law, criminal convictions for offenses unrelated to abuse or neglect would not disqualify an applicant for employment. For example, criminal convictions such as traffic violations, possession of marijuana, and prostitution, may not disqualify an applicant. However, these convictions *may* disqualify an applicant based on a particular employer's hiring or personnel policies, or based on other regulations or policies[4].

Even if the applicant has been convicted of a barrier crime, it may not always prevent employment. An applicant may be hired if:

(i) The individual has only one misdemeanor conviction considered to be a barrier crime;
(i) The criminal offense did NOT involve abuse or neglect; AND
(ii) Five years have lapsed since the conviction occurred.

Examples of such misdemeanor convictions that would not necessarily be a barrier to employment may include, but are not limited to:

- Hazing
- Reckless handling of a firearm
- Access to loaded firearm by children
- Assault and battery
- Assault and battery against law enforcement officers
- Burning or destroying any other building, or structure valued less than $200
- Burning or destroying personal property, standing grain, etc., valued less than $200
- Threats to bomb or damage buildings or means of transportation, false information as to danger to such buildings, etc. (if person is younger than 15 years of age)
- Setting woods, etc, on fire intentionally whereby another is damaged or jeopardized
- Setting off chemical bombs capable of producing smoke in certain public buildings

[4] Such as federal Medicare or Medicaid certification regulations.

- Carelessly damaging property by fire

DISCLOSURE OF CRIMINAL CONVICTIONS

If an applicant is denied employment because of convictions appearing on his criminal history record, the employer is required to provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

While further dissemination of the results of a criminal record check by an employer is prohibited, employers may provide criminal record information and reason for employment termination to state authorities to comply with legal reporting requirements.[5] Criminal conviction information reported to the Board of Nursing that was not revealed by the licensed nurse or C.N.A. upon initial application for licensure or certification may form the basis for disciplinary action to be taken by the Board of Nursing. Disciplinary actions for such "fraud or deceit in procuring a license or certificate" or for falsifying an employment application may range from reprimand to revocation of the license or certification.

> Note: The law specifies that incomplete or false statements in an applicant's sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges constitutes a misdemeanor offense. Subsequent disclosure or discovery of a relevant criminal conviction or convictions may also disqualify the person from being hired and from continuing on in the hired employment.

III. GETTING A CRIMINAL RECORD EXPUNGED

Having been granted a pardon, clemency, or having civil rights restored following a felony conviction does not change the fact that a person has a criminal conviction. That conviction remains on the individual's licensure/certification or employment record. Therefore, any criminal conviction *must* be revealed on any application for licensing or employment, unless it has been expunged.

Chapter 23.1 of Title 19.2 of the Code of Virginia describes the process for expunging criminal records. If a person wants a conviction to be removed from their record, the individual must seek expungment pursuant to §19.2-392.2 of the Code of Virginia. Individuals should seek legal counsel to pursue this course, which involves specific petitions to the court, State Police procedures, and hearings in court.

APPENDIX.

BARRIER CRIMES PROHIBITING EMPLOYMENT
IN NURSING HOME FACILITIES, HOME CARE ORGANIZATIONS,
HOSPICE PROGRAMS AND ASSISTED LIVING FACILITIES

[5] See § 54.1-2400.6 of the Code of Virginia for mandatory reporting requirements.

NOTE: This list is not all-inclusive and should be used only as a guide. For further clarification regarding criminal offenses, refer to Title 18.2 Crimes and Offenses Generally of the *Code of Virginia*.

State Code	Offense
18.2 - 30	Murder and manslaughter declared felonies
18.2 – 31	Capital murder defined
18.2 – 32	First and second degree murder defined
18.2 – 32.1	Murder of a pregnant woman
18.2 – 33	Felony homicide
18.2 – 35	How voluntary manslaughter punished
18.2 – 36	How involuntary manslaughter punished
18.2 –36.1	Certain conduct punishable as involuntary manslaughter
18.2 – 37	How and where homicide prosecuted and punished
18.2 – 41	Malicious wounding by a mob
18.2 – 47	Abduction
18.2 - 48	Abduction with intent to extort money or for immoral purposes
18.2 - 51	Shooting, stabbing, etc. with intent to maim, kill, etc.
18.2 - 51.1	Malicious bodily injury to law enforcement officers or firefighters
18.2 - 51.2	Aggravated malicious wounding
18.2 - 51.3	Reckless endangerment/throwing objects from places higher than one story
18.2 - 51.4	Maiming, etc., of another resulting from driving while intoxicated
18.2 - 52	Malicious bodily injury by means of caustic substance
18.2 - 52.1	Possession of infectious biological substances
18.2 - 53	Shooting, etc., in committing or attempting a felony
18.2 - 53.1	Use or display of firearm in committing felony
18.2 - 54.1	Attempts to poison
18.2 - 54.2	Alteration of food, drink, drugs, cosmetics, etc.
18.2 - 55	Bodily injuries caused by prisoners, probationers, or parolees
18.2 - 56	Hazing
18.2 - 56.1	Reckless handling of firearms
18.2 - 56.2	Allowing access to firearms by children
18.2 - 57	Assault and battery
18.2 - 57.01	Pointing a laser at law-enforcement officer
18.2 - 57.2	Assault and battery against a family or household member
18.2 - 58	Robbery
18.2 - 58.1	Carjacking
18.2 – 60	Threats of death or bodily injury
18.2 – 60.3	Felony stalking
18.2 - 61	Rape
18.2 - 63	Carnal knowledge of child between 13 and 15 years of age
18.2 - 64.1	Carnal knowledge of certain minors
18.2 - 64.2	Carnal knowledge of inmate, parolee, probationer, or pre-trial or post-trial offender
18.2 - 67.1	Forcible sodomy

State Code	Offense
18.2 - 67.2	Object sexual penetration
18.2 - 67.2:1	Marital sexual assault
18.2 - 67.3	Aggravated sexual battery
18.2 - 67.4	Sexual battery
18.2 - 67.4:1	Infected sexual battery
18.2 - 67.5	Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery
18.2 - 77	Burning or destroying dwelling house, etc.
18.2 - 79	Burning or destroying meeting house, etc.
18.2 - 80	Burning or destroying any other building or structure (valued at $200 or more)
18.2 - 81	Burning or destroying personal property, standing grain, etc. (valued at $200 or more)
18.2 - 82	Burning building or structure while in such building or structure with intent to commit felony
18.2 - 83	Threats to bomb or damage buildings or means of transportation, false information as to danger to such buildings, etc. (if person is older than 15 years of age)
18.2 - 84	Causing, inciting, etc., commission or acts described in 18.2 - 83 (if person is older than 15 years of age)
18.2 - 85	Manufacture, possession, use, etc. of fire bombs or explosive material or devices
18.2 - 86	Setting fire to woods, fences, grass, etc.
18.2 - 87	Setting woods, etc. on fire intentionally, where another's property is damaged or jeopardized
18.2 - 87.1	Setting of chemical bombs capable of producing smoke in certain public buildings
18.2 - 88	Carelessly damaging property by fire
18.2 – 286.1	Drive by shooting
18.2 – 289	Use of a machine gun in a crime of violence
18.2 – 290	Aggressive use of a machine gun
18.2 - 300	Use of a sawed-off shotgun in a crime of violence
18.2 - 314	Failing to secure medical attention for injured child
18.2 - 355	Pandering, taking, detaining, etc., person for prostitution, etc., or consenting thereto
18.2 – 361	Crimes against nature involving children
18.2 - 366	Incest
18.2 - 369	Abuse and neglect of incapacitated adults
18.2 - 370	Taking indecent liberties with children
18.2 - 370.1	Taking indecent liberties with child by person in custodial or supervisory relationship
18.2 - 371.1	Abuse and neglect of children
18.2 – 373	Obscene items enumerated
18.2 - 374	Production, publication, sale, possession, etc., of obscene items
18.2 - 374.1	Production, publication, sale, possession with intent to distribute, financing, etc., of sexually explicit items involving children
18.2 – 374.1:1	Possession of child pornography
18.2 – 374.3	Electronic facilitation of pornography
18.2 – 375	Obscene exhibitions and performances

State Code	Offense
18.2 - 376	Advertising, etc., obscene items, exhibitions or performances
18.2 – 376.1	Enhanced penalties for using a computer in certain violations
18.2 - 377	Placards, posters, bills, etc.
18.2 – 378	Coercing acceptance of obscene articles or publications
18.2 - 379	Employing or permitting minor to assist in offense under article.
18.2 – 474.1	Delivery of drugs to prisoners
18.2 – 477	Escape from jail
53.1 - 203	Felonies by prisoners
	Equivalent offense in another state