

## Virginia Board of Social Work

### Impact of Criminal Convictions, Impairment, and History on Licensure or Registration

This document provides information for persons interested in becoming a licensed baccalaureate social worker (“LBSW”), a licensed master’s social worker (“LMSW”), licensed clinical social worker (“LCSW”), or licensed art therapist. It clarifies how convictions, impairment, and other history may affect the application process, registration as a supervisee, and subsequent licensure by the Board of Social Work.

Until an individual applies for licensure, the Board 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.*

#### **I. Guidelines for processing applications for supervisee registration or licensure: examination, endorsement, and reinstatement.**

Applicants for licensure by examination, endorsement and reinstatement who meet the qualifications set forth in statutes and regulations may be issued a license pursuant to authority delegated to the executive director of the Board in accordance with Board regulations.

An applicant whose license has been revoked or suspended in another jurisdiction is not eligible for licensure in Virginia unless the credential has been reinstated by the jurisdiction which revoked or suspended it. (*See* Va. Code § 54.1-2408.)

Affirmative responses to questions related to grounds for the Board to refuse to admit a candidate to an examination, refuse to issue a license, or impose sanction on an application for registration of supervision or for licensure will be referred to the executive director to determine how to proceed. The executive director, or designee, may approve the application without referral to the Credentials Committee in the following cases:

1. The applicant presents a history of chemical dependence with evidence of continued abstinence and recovery. The executive director cannot approve applicants for reinstatement if the license was revoked or suspended by the Board or if it lapsed while an investigation was pending.
2. The applicant has a history of criminal conviction(s) which does not constitute grounds for denial or Board action or the applicant’s criminal conviction history meets the following criteria:

- The applicant's conviction history consists solely of misdemeanor convictions involving moral turpitude that are greater than 10 years old.
- The applicant's conviction history consists of one misdemeanor conviction involving moral turpitude greater than 5 years old and all court requirements have been met.
- The applicant's conviction history consists of one misdemeanor conviction involving moral turpitude less than 5 years old, the applicant is in full compliance or has met all court requirements, and the applicant has accepted a pre-hearing consent order to approve the application with a reprimand.
- The applicant's conviction history consists of one non-violent felony conviction greater than 10 years old and all court/probationary/parole requirements have been met.
- The applicant's conviction history consists of offenses committed as a juvenile and the applicant has no record of convictions as an adult.

## **II. Basis for denial of registration or licensure.**

The Board may refuse to admit a candidate to any examination or refuse to issue a license or registration to any applicant for the reasons delineated in 18VAC140-20-160.

Criminal convictions for ANY felony may cause an applicant to be denied licensure or registration as a supervisee. Each applicant is considered on an individual basis. No criminal convictions or impairments are an absolute bar to licensure. The Board will consider the factors in § 54.1-204 when considering applications for licensure.

## **III. Additional information needed regarding criminal convictions, past actions, or possible impairment.**

Applications for licensure 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.

*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 ultimate authority to approve an applicant for testing and subsequent licensure, or to deny approval rests with the Board.

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

- A certified copy of all conviction orders (obtained from the court 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 social work-related or art therapy-related employers, if possible).

The following information will be requested from an 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 (social work-related or art therapy-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 social work-related or art therapy-related employers, if possible).

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

Once the Board has received all 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 representative(s) for an informal fact-finding conference to consider the application. After an informal fact-finding conference, the application may be: i) approved, ii) approved with conditions or terms, or iii) denied.

Failure to reveal criminal convictions, past disciplinary actions, and/or possible impairment issues on any application for registration or licensure is grounds for disciplinary action by the Board, even after the registration or license has been issued. (*See* 18VAC140-20-160.) Such action is "procurement of license by fraud or misrepresentation" and a basis for disciplinary action that is

separate from the underlying conviction, past action, or impairment issue once discovered. (*Id.*) Possible disciplinary actions that may be taken range from reprimand to revocation of a license.

#### **IV. Mandatory suspension following licensure**

Criminal convictions and other actions can also affect an individual already licensed by the Board. 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 to practice in Virginia. (*See* Va. Code § 54.1-2409.) This is a nondiscretionary action taken by the director of DHP. The mandatory suspension remains in effect until the individual applies for reinstatement and appears at a formal hearing before the Board and demonstrates sufficient evidence that the practitioner is safe and competent to return to practice. At the formal hearing, three fourths of the Board members present must agree to reinstate the individual's license to practice for reinstatement. (Va. Code § 54.1-2409.)

#### **V. Expunging a criminal record.**

Pardons, clemency grants, or restoration of civil rights following a felony conviction does not alter the existence of the criminal conviction. That conviction remains on the individual's licensure record. Therefore, any criminal conviction *must* be revealed on any application for licensing, unless it has been expunged. Individuals should secure private legal counsel for questions related to criminal conviction expungement, a process over which the Board has no control.