

STANDARDS RELATED TO CRIMINAL HISTORY FOR CURRENT LICENSEES AND CERTIFICATE HOLDERS, APPLICANTS FOR LICENSURE OR CERTIFICATES, AND FOR PREDETERMINATION OF ELIGIBILITY FOR LICENSURE OR CERTIFICATES

CRIMINAL OFFENSES THAT WOULD CONSTITUTE DISQUALIFICATION FROM LICENSURE OR CERTIFICATION.

Licensure or Certification of Individuals with Criminal History

(a) Purpose and Applicability. This section establishes the criteria utilized by the Board in determining the effect of criminal history on eligibility for licensure or certification and implements the requirements of Oklahoma Statutes Title 59 Sections 567.1. et seq. and 4000.1 (2019). This section applies to:

- (1) all currently licensed OR certified individuals;
- (2) all individuals seeking to obtain a license or certificate; and
- (3) all individuals seeking an initial determination of their eligibility for licensure or certification.

(b) The felonies listed below in subsection (c) disqualify an individual from retaining licensure or becoming licensed, retaining certification or becoming certified in Oklahoma. However, subsection (c) is not an exhaustive or exclusive list of crimes, both felonies and misdemeanors resulting in a conviction or a deferred sentence, that may result in discipline from the Board, up to and including revocation. The felonies listed in subsection (c) disqualify an individual because they substantially relate to the practice of medicine and pose a reasonable threat to public safety for the reasons stated below.

- (1) **The practice of medicine is a unique profession.** Licensees and certificate holders practice medicine autonomously in a wide variety of settings and provide care to patients who are, by virtue of their illness or injury, physically, emotionally, and/or financially vulnerable. These patients often include the elderly, children, those with mental or cognitive disorders, sedated or anesthetized patients, and/or disabled or immobilized individuals. Individuals who have engaged in criminal conduct place patients, healthcare employers and employees, and the public at risk of harm.
- (2) **Crimes involving fraud and/or theft.** Licensees and certificate holders often have unfettered access to patients' privileged information, financial information, and valuables, including but not limited to medications, money, jewelry, credit cards/checkbook, and/or sentimental items. The practice of medicine continues 24 hours per day in all healthcare settings, including those where there is often no direct supervision of the individual. Patients in these healthcare settings are particularly vulnerable to the unethical, deceitful, and illegal conduct of a licensee or certificate holder. When an individual has engaged in criminal behavior involving fraud and/or theft, the Board is mindful that similar misconduct may be repeated in healthcare settings, thereby placing patients, healthcare employers and employees, and the public at risk. As such, crimes involving any type of fraud and/or theft are highly relevant to an individual's ability to provide safe medical care.

- (3) **Crimes involving sexual misconduct.** Licensees and certificate holders frequently provide medical care to partially clothed or fully undressed patients, who are particularly vulnerable to exploitation. Due to the intimate nature of medical care, professional boundaries in the practice of medicine are extremely important. When an individual has engaged in criminal behavior involving any type of sexual misconduct, the Board is mindful that similar misconduct may be repeated in healthcare settings. As such, crimes involving any type of sexual misconduct are highly relevant to an individual's ability to provide safe medical care.
- (4) **Crimes involving lying, falsification, and/or deception.** Licensees and certificate holders are required to accurately and honestly report and record information in a variety of places, such as medical records, pharmacy records, billing records, therapy notes, and plans of care, as well as to report errors in their own medical practice. When an individual has engaged in criminal behavior involving lying, falsification, and/or deceptive conduct, the Board is mindful that similar misconduct may be repeated in healthcare settings, thereby placing patients, healthcare employers and employees, and the public at risk of harm. As such, crimes involving any type of lying, falsification and/or deception are highly relevant to an individual's ability to provide safe medical care.
- (5) **Crimes involving drugs and/or alcohol.** Licensees and certificate holders have a duty to their patients to provide safe, effective medical care and to be able to practice safely. Individuals who have a substance use disorder may have impaired judgment and motor skills and are at risk for harming their patients and/or the public. Licensees and certificate holders have access to many medications and drugs and those with substance use disorders may misuse or steal drugs. Individuals affected by a substance use disorder may be unable to accurately assess patients, make appropriate judgments, or intervene in a timely and appropriate manner, thus putting their patients at risk. This danger is heightened when the licensee or certificate holder works in an autonomous setting where other healthcare providers are not present to intervene for the patient or the public. As such, crimes related to the use or possession of drugs or alcohol are highly relevant to an individual's fitness to practice.
- (6) **Crimes involving violence and/or threatening behavior.** Licensees and certificate holders provide care to the most vulnerable of populations, including patients who often have no voice of their own and cannot advocate for themselves. Further, patients are dependent on the caregiver-patient relationship for their daily care. When an individual has engaged in violent or threatening criminal behavior, the Board is mindful that patients may be at risk for similar behavior in a healthcare setting. As such, crimes involving violence and threatening behavior are highly relevant to an individual's fitness to practice.

(c) All crimes listed in this subsection are as described in Titles 21, 47 and 63 of the Oklahoma Statutes. In addition, the Board recognizes and gives similar treatment to similar offenses charged in other jurisdictions. Felony convictions that disqualify an individual from retaining licensure or becoming licensed or retaining certification or becoming certified in professions regulated by this Board in Oklahoma include:

(1) Crimes involving fraud, theft, lying and/or falsification.

- (A) Robbery 21 O.S. § 791 et seq.
- (B) Falsely personating another to gain money or property 21 O.S. § 1532.
- (C) Identity theft 21 O.S. § 1533.1.

(2) Crimes involving sexual misconduct.

- (A) Human Trafficking 21 O.S. § 748.
- (B) Trafficking in children 21 O.S. § 866.
- (C) Incest 21 O.S. § 885.
- (D) Forcible sodomy 21 O.S. § 888.
- (E) Indecent exposure, indecent exhibitions, obscene material or child pornography, solicitation of minors 21 O.S. § 1021.
- (F) Procure, cause the participation of a minor in any child pornography, buys, or knowingly possesses, procures, manufactures, or causes to be sold or distributed child pornography 21 O.S. §§ 1021.2 and 1024.2
- (G) Commercial sale or distribution of pornography 21 O.S. § 1040.13.
- (H) Soliciting/offering sex with minor 21 O.S. § 1040.13a.
- (I) Offering or transporting one under 18 for sex 21 O.S. § 1087.
- (J) Child Prostitution – unlawful detainment in prostitution house 21 O.S. § 1088.
- (K) Lewd or indecent proposals to minor, sexual battery of minor 21 O.S. § 1123.
- (L) Knowingly engaging in acts likely to spread Human Immunodeficiency Virus 21 O.S. § 1192.1.

(3) Crimes involving drugs and/or alcohol.

- (A) Causing, aiding, abetting minor to commit controlled dangerous substance crimes 21 O.S. § 856.1.
- (B) Drug trafficking 63 O.S. § 2-415.

(4) Crimes involving threats, violence and/or harm to another individual.

- (A) Assault, battery, or assault and battery with a dangerous weapon 21 O.S. § 645.
- (B) Aggravated assault and battery 21 O.S. § 646.
- (C) Aggravated assault and battery on a law officer 21 O.S. § 650.
- (D) Aggravated assault and battery on medical personnel with firearm or other dangerous weapon 21 O.S. § 650.5.
- (E) Murder, first or second degree 21 O.S. §§ 701.7 and 701.8.
- (F) Manslaughter, first degree 21 O.S. § 711.
- (G) Kidnapping 21 O.S. § 741.
- (H) Extortionate kidnapping 21 O.S. § 745.
- (I) Malicious intentional intimidation or harassment based on suspect classification 21 O.S. § 850.
- (J) Desertion – abandonment of child under ten 21 O.S. § 851.
- (K) Child endangerment by permitting child abuse 21 O.S. § 852.1.
- (L) Rape first or second degree 21 O.S. §§ 1111 and 1114.
- (M) Peeping Tom – personally or electronically 21 O.S. § 1171.

- (N) Stalking 21 O.S. § 1173.
- (O) Endangering or injuring a person during arson or attempt 21 O.S. § 1405.
- (P) Failure to stop after fatal accident 47 O.S. § 10-102.1.
- (Q) Mingling poison, drugs, or sharp objects with food, drink 21 O.S. § 832.

(5) Crimes involving harm to property.

- (A) Violation of Oklahoma Antiterrorism Act 21 O.S. §§ 1268 et seq.
- (B) Arson, first, second or third degree 21 O.S. §§ 1401, 1402, and 1403.
- (C) Burglary, first degree 21 O.S. § 1431.

(d) The Executive Director is authorized to close a file requesting initial determination of eligibility when the person seeking determination of eligibility for licensure has failed to respond to a written request from the Board for information, within sixty (60) days of the written request.

HB 1373 Effective November 1, 2019 - – instructions/talking points

- Agency shall list with specificity any criminal offense that is disqualifying offense for occupation licensed by the agency.
- Any disqualifying offense shall substantially relate to the duties and responsibilities of the occupation and pose a reasonable threat to public safety.
- Make the list available upon request and publish on the website.
- Promulgate rules.
- Petition the licensing authority to request initial determination of eligibility for licensure/certification for individuals with history of criminal conviction.
- Application fee = \$95 (non-refundable)
- The initial determination is based entirely on the information provided with the petition
- IF the initial determination is that the petitioner is presently appear eligible is not a guarantee that he/she will be eligible at the time an actual application for licensure.
- Any subsequent conduct, or facts not reported or criminal conviction not disclosed at the time of initial determination may bear on the eligibility at the time of actual application for licensure