

## **LICENSE APPLICANTS WHO WERE CONVICTED OF A CRIME OR FORMALLY DISCIPLINED**

License applicants who were convicted of a crime or formally disciplined by another licensing board may be denied a license from the California Board of Accountancy (CBA) in certain circumstances. The following information provides general guidance as to how criminal convictions and formal license discipline are considered by the CBA to determine a license applicant's eligibility for licensure and the process for license denial. Each license applicant is evaluated on a case-by-case basis to determine license eligibility. A criminal conviction or formal license discipline does not automatically preclude an applicant from CBA licensure.

## **FINGERPRINTING FOR CRIMINAL HISTORY REPORT**

The CBA requires all license applicants to submit a full set of fingerprints for purposes of conducting a criminal history record check. (See Business and Professions Code (BPC), § [144](#).)

## **CRIMINAL CONVICTIONS**

### **Definition of Criminal Conviction**

For purposes of license eligibility, a criminal conviction means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt, and the time for appeal of the conviction has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence. (BPC, §§ [7.5](#), [480](#), subd. (h).)

### **Disclosure of Criminal Conviction on License Application**

A license applicant is not required to disclose a criminal conviction on the license application. The CBA may, however, request mitigating information from a license applicant regarding the applicant's criminal history for purposes of determining substantial relationship or demonstrating evidence of rehabilitation. (BPC, § [480](#), subd. (f)(2).)

Any disclosure by a license applicant of mitigating information is voluntary, and an applicant's decision not to disclose mitigating information will not be a factor in the CBA's decision to grant or deny the license application. (BPC, § [480](#), subd. (f)(2).)

### **Types of Criminal Convictions Used in Licensing Decisions**

Conviction of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made may be grounds for license denial if:

- The conviction occurred within seven years from the date of the license application; or
- The applicant was released from incarceration within seven years from the date of the license application; or
- The applicant is presently incarcerated for the crime. (BPC, § [480](#), subd. (a)(1).)

A criminal conviction that is older than seven years from the date of the license application may also be grounds for license denial if:

- The applicant was convicted of a serious felony, as defined in Penal Code section [1192.7](#); or
- The applicant was convicted of a crime for which registration is required pursuant to Penal Code section [290](#), subdivision (d)(2) or (3). (BPC, § [480](#), subd. (a)(1).)

### **Substantially Related Criminal Convictions**

The CBA uses the following criteria to evaluate whether a crime is substantially related to the qualifications, functions or duties of a licensee.

For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his or her certificate or permit in a manner consistent with the public health, safety, or welfare.

In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:

- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of the accounting profession.

A substantially related crime, professional misconduct, or act shall include, but are not limited to, the following:

- (1) A crime, professional misconduct, or act that involves dishonesty, fraud, or breach of fiduciary responsibility of any kind;
- (2) Fraud or deceit in obtaining a certified public accountant's certificate or public accountant's permit under Chapter 1, Division III of the Business and Professions Code;
- (3) Gross negligence in the practice of public accountancy or in the performance of bookkeeping operation described in Section 5052 of the Business and Professions Code;
- (4) A crime or act of professional misconduct that reflects a lack of sound professional or personal judgment relevant to the practice of public accountancy, regardless of whether financial harm occurred to a consumer.
- (5) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board.

### **Rehabilitation Criteria**

The license applicant is responsible for submitting evidence, if any, to the CBA of the applicant's rehabilitation following a criminal conviction. The CBA uses the following criteria to evaluate the applicant's rehabilitation and eligibility for licensure.

- (1) Nature and gravity of the act(s) or offense(s).
- (2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.
- (3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Nature and extent of actual and potential consumer harm.
- (7) The individual's attitude toward his or her commission of the violations.
- (8) The individual's recognition of wrongdoing.
- (9) The individual's history of violations.
- (10) Nature and extent to which the applicant or licensee has taken corrective action to ensure the violation will not recur.
- (11) Nature and extent of restitution to consumers harmed by violations.
- (12) Other aggravating or mitigating factors.
- (13) Evidence, if any, of rehabilitation submitted by the applicant or licensee; however, evidence of rehabilitation does not necessarily result in a finding that the licensee is rehabilitated.

For purposes of issuing a license to an applicant that has been convicted of a crime, the board will consider the applicant to have made a showing of rehabilitation if the applicant has completed the criminal sentence at issue without a violation of parole or probation.

If the applicant has been convicted of a crime and did not complete the criminal sentence at issue without a violation of parole or probation, and/or if the applicant has been subject to formal discipline by a licensing board in or outside the State within the seven years preceding the application that was based on professional misconduct that is substantially related to the qualifications, functions or duties of a certified public accountant or public accountant, and that would have been cause for discipline by the Board, unless the discipline was based on a conviction that has been dismissed as specified in Section 480(a)(2) of the Business and Professions Code, the Board will find the applicant to have made a showing of rehabilitation if, in applying its criteria for rehabilitation, set forth in (a)(1)-(13) above, the board finds that the applicant is rehabilitated.

For purposes of suspending, revoking, or restoring a license, or the reduction of penalty, the Board will consider whether the licensee made a showing of rehabilitation, if the licensee:

- (1) has completed the criminal sentence at issue without a violation of parole or probation, and/or

(2) has demonstrated rehabilitation using criteria set forth in (a)(1)-(13).

### **Criminal Conviction Exemptions**

The CBA will not deny a license to an applicant with a criminal conviction if any of the following apply:

- The applicant obtained a certificate of rehabilitation under chapter 3.5 (commencing with section [4852.01](#)) of title 6 of part 3 of the Penal Code. (BPC, § [480](#), subd. (b).)
- The applicant was granted clemency or a pardon by a state or federal executive. (BPC, § [480](#), subd. (b).)
- The applicant made a showing of rehabilitation pursuant to Business and Professions Code section [482](#). (BPC, § [480](#), subd. (b).)
- The conviction was dismissed pursuant to Penal Code sections [1203.4](#), [1203.4a](#), [1203.41](#), [1203.42](#), or [1203.425](#), or a comparable dismissal or expungement. An applicant who has a conviction that was dismissed pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42 must provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice. (BPC, § [480](#), subd. (c).)

The CBA also will not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication. (BPC, § [480](#), subd. (d).)

### **PRIOR FORMAL LICENSE DISCIPLINE**

The CBA may deny a license application if the applicant was formally disciplined by a licensing board in or outside California within the preceding seven years from the date of the application based on professional misconduct that would have been cause for discipline before the CBA and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. (BPC, [480](#), subd. (a)(2).)

However, the CBA will not deny a license based on prior disciplinary action if the basis for that disciplinary action was a conviction that was dismissed pursuant to Penal Code sections [1203.4](#), [1203.4a](#), [1203.41](#), [1203.42](#), or [1203.425](#), or a comparable dismissal or expungement. (BPC, [480](#), subd. (a)(2).)

### **Substantially Related Professional Misconduct**

The CBA uses the following criteria to evaluate whether professional misconduct is substantially related to the qualifications, functions or duties of a licensee.

For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by

his or her certificate or permit in a manner consistent with the public health, safety, or welfare.

In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:

- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of the accounting profession.

A substantially related crime, professional misconduct, or act shall include, but are not limited to, the following:

- (1) A crime, professional misconduct, or act that involves dishonesty, fraud, or breach of fiduciary responsibility of any kind;
- (2) Fraud or deceit in obtaining a certified public accountant's certificate or public accountant's permit under Chapter 1, Division III of the Business and Professions Code; (3) Gross negligence in the practice of public accountancy or in the performance of bookkeeping operation described in Section 5052 of the Business and Professions Code;
- (4) A crime or act of professional misconduct that reflects a lack of sound professional or personal judgment relevant to the practice of public accountancy, regardless of whether financial harm occurred to a consumer.
- (5) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board.

### **Rehabilitation Criteria**

The license applicant is responsible for submitting evidence, if any, to the CBA of the applicant's rehabilitation following a criminal conviction. The CBA uses the following criteria to evaluate the applicant's rehabilitation and eligibility for licensure.

- (1) Nature and gravity of the act(s) or offense(s).
- (2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.
- (3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Nature and extent of actual and potential consumer harm.
- (7) The individual's attitude toward his or her commission of the violations.
- (8) The individual's recognition of wrongdoing.
- (9) The individual's history of violations.

- (10) Nature and extent to which the applicant or licensee has taken corrective action to ensure the violation will not recur.
- (11) Nature and extent of restitution to consumers harmed by violations.
- (12) Other aggravating or mitigating factors.
- (13) Evidence, if any, of rehabilitation submitted by the applicant or licensee; however, evidence of rehabilitation does not necessarily result in a finding that the licensee is rehabilitated.

For purposes of issuing a license to an applicant that has been convicted of a crime, the board will consider the applicant to have made a showing of rehabilitation if the applicant has completed the criminal sentence at issue without a violation of parole or probation.

If the applicant has been convicted of a crime and did not complete the criminal sentence at issue without a violation of parole or probation, and/or if the applicant has been subject to formal discipline by a licensing board in or outside the State within the seven years preceding the application that was based on professional misconduct that is substantially related to the qualifications, functions or duties of a certified public accountant or public accountant, and that would have been cause for discipline by the Board, unless the discipline was based on a conviction that has been dismissed as specified in Section 480(a)(2) of the Business and Professions Code, the Board will find the applicant to have made a showing of rehabilitation if, in applying its criteria for rehabilitation, set forth in (a)(1)-(13) above, the board finds that the applicant is rehabilitated.

For purposes of suspending, revoking, or restoring a license, or the reduction of penalty, the Board will consider whether the licensee made a showing of rehabilitation, if the licensee:

- (1) has completed the criminal sentence at issue without a violation of parole or probation, and/or
- (2) has demonstrated rehabilitation using criteria set forth in (a)(1)-(13).

## **PROCESS FOR DENIAL OF AN APPLICATION**

### **Procedure to Deny a License Application**

If the CBA denies an application for licensure based solely or in part on the applicant's conviction history, the CBA will notify the applicant in writing of the following:

1. The denial or disqualification of licensure.
2. Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.
3. That the applicant has the right to appeal the decision.
4. The processes for the applicant to request a copy of their complete conviction history and question the accuracy or completeness of the record pursuant to Penal Code sections [11122 to 11127](#). (BPC, § [480](#), subd. (f)(3).)

Upon denial of an application for a license, the CBA will do either of the following:

1. File and serve a statement of issues in accordance with [chapter 5](#) (commencing with section 11500) of part 1 of division 3 of title 2 of the Government Code.
2. Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under [chapter 5](#) (commencing with section 11500) of part 1 of division 3 of title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived. (BPC, § [485](#).)

Along with the notice of application denial, the applicant will be provided with the following:

1. The earliest date on which the applicant may reapply for a license, which will be one year from the date of service of the notice, unless an earlier date or a later date is prescribed by another statute.
2. Notice that all competent evidence of rehabilitation presented will be considered upon a reapplication.
3. A copy of the CBA rehabilitation criteria. (BPC, § [486](#).)

### **Process if Applicant Appeals License Denial**

If a notice of denial is served on the applicant and the applicant submits a timely written request for a hearing, a hearing will be conducted within 90 days from the date the hearing is requested unless the applicant agrees to a postponement or continuance of the hearing. The Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted. (BPC, § [487](#).)

Except as otherwise provided by law, following a hearing, the CBA may take any of the following actions:

1. Grant the license effective upon completion of all licensing requirements by the applicant.
2. Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.
3. Deny the license.
4. Take other action in relation to denying or granting the license. (BPC, § [488](#), subd. (a).)

The CBA will issue a decision following the hearing. If the license is denied, the decision will inform the applicant:

1. The earliest date on which the applicant may reapply for a license.
2. Notice that all competent evidence of rehabilitation presented will be considered upon a reapplication.
3. A copy of the rehabilitation criteria. (BPC, § [486](#).)