

CHAPTER 13
USE OF CRIMINAL CONVICTIONS IN ELIGIBILITY DETERMINATIONS AND INITIAL
LICENSING DECISIONS

193F—13.1(272C) Definitions. For the purposes of these rules, the following definitions shall apply:

“*Complete criminal record*” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted.

“*Conviction or convicted*” includes all convictions regardless of whether classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred. “Conviction” includes a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“*Disqualifying offense*” means a conviction directly related to the practice of the profession. A conviction is directly related to the practice of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession, or (2) the circumstances under which an offense was committed are circumstances customary to a licensed profession.

“*License or licensure,*” as the term is used in this chapter, includes a registration as an associate appraiser, original certification as a certified residential real property appraiser or certified general real property appraiser, upgrade from a certified residential real property appraiser to a certified general real property appraiser, reciprocal license, temporary practice permit, or any other license or certification issued by the board.

[ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—13.2(272C) License application.

13.2(1) *Disqualifying offense determination.* If an applicant for licensure elects not to petition the board for an eligibility determination, the applicant’s convictions will be reviewed when the board receives a completed license application. An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance. Upon request of the board’s executive officer, an applicant with convictions must submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete. An applicant is strongly encouraged to submit all evidence of rehabilitation that the applicant wishes to be considered by the board as part of the license application. The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated. Any application fees paid will not be refunded if the license is denied.

13.2(2) *Time and manner of decision.* The board may make a decision in accordance with normal application processing timelines after discussing the petition for eligibility determination at a board meeting, in closed session, or may authorize staff to make decisions regarding potentially disqualifying offenses.

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193F—13.3(272C) Eligibility determination.

13.3(1) *Eligibility determination.* An individual who has not yet submitted a completed license application may petition the board for an eligibility determination of whether one or more of the individual’s convictions are disqualifying offenses that would prevent the individual from being licensed. A petitioner may submit a petition for eligibility determination at any time prior to applying for a license. An applicant for licensure is not required to petition the board for an eligibility determination prior to applying for a license. To petition the board for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner must submit all of the following:

- a. A completed eligibility determination form, which is available on the board’s website;

- b. The complete criminal record for each of the petitioner's convictions;
- c. A personal statement regarding whether each conviction directly relates to the practice of the profession;
- d. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- e. Payment of a nonrefundable fee in the amount of \$25.

13.3(2) *Time and manner of decision.* The board has 30 days from receiving a petition for eligibility determination, or until the next regularly scheduled board meeting, whichever is later, to make a decision. The board may make a decision after discussing the petition for eligibility determination at a board meeting, in closed session, or may authorize staff to make decisions on petitions for eligibility determinations or license applications. A written decision will be sent to the petitioner or applicant by regular mail and, if an email address was provided, by email.

13.3(3) *Inaccurate or incomplete information.* If the information supplied in connection with a petition for eligibility determination is not accurate or is incomplete, or if applicable laws, rules, or guidelines change or are impacted by intervening board orders or case law, the board's eligibility determination shall not be binding on a future board.

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193F—13.4(272C) Substance of decision. In reviewing a petition for eligibility determination or a license application involving potentially disqualifying offenses, the board will determine whether any of the convictions are disqualifying offenses in the following manner.

13.4(1) *No disqualifying offenses.*

a. If the board finds that none of the convictions disclosed in an eligibility determination petition are disqualifying offenses, the board will issue a written decision informing the petitioner that the disclosed convictions will not be grounds for license denial.

b. If the board finds that none of an applicant's convictions disclosed in a license application are disqualifying offenses, the applicant's convictions will not form the basis of any denial.

c. Notwithstanding the foregoing, an applicant with no disqualifying convictions must still meet all other requirements to be eligible for licensure and may be denied a license on other grounds.

13.4(2) *Disqualifying offense.* If one or more convictions are disqualifying offenses, the board will determine whether the petitioner or applicant has established rehabilitation by clear and convincing evidence utilizing the following factors:

a. The nature and seriousness of the crime for which the applicant was convicted.

b. The amount of time that has passed since the commission of the crime. There is a rebuttable presumption that an applicant is rehabilitated and an appropriate candidate for licensure five years after the date of the applicant's release from incarceration, provided that the applicant was not convicted of sexual abuse in violation of Iowa Code section 709.4, a sexually violent offense as defined in Iowa Code section 229A.2, dependent adult abuse in violation of Iowa Code section 235B.20, or a forcible felony as defined in Iowa Code section 702.11, and the applicant has not been convicted of another crime after release from incarceration.

c. The circumstances relative to the offense, including any aggravating and mitigating circumstances or social conditions surrounding the commission of the offense.

d. The age of the applicant at the time the offense was committed.

e. Any treatment undertaken by the applicant.

f. Whether a certificate of employability has been issued to the applicant pursuant to Iowa Code section 906.19.

g. Any letters of reference submitted on behalf of the applicant.

h. All other relevant evidence of rehabilitation and present fitness of the applicant.

13.4(3) *Petitioner or applicant rehabilitated.*

a. If the board finds that the petitioner established rehabilitation for all disqualifying offenses disclosed in an eligibility determination petition, the board will issue a written decision informing the petitioner that the disclosed convictions will not be grounds for denial if the petitioner later submits a completed license application.

b. If the board finds that the applicant established rehabilitation for all disqualifying offenses, the applicant's convictions will not form the basis of any denial.

c. Notwithstanding the foregoing, an applicant who demonstrated rehabilitation for all disqualifying convictions must still meet all other requirements to be eligible for licensure and may be denied a license on other grounds.

13.4(4) *Petitioner or applicant not rehabilitated.* If the board finds the petitioner or applicant failed to demonstrate rehabilitation for all disqualifying offenses, the board will issue a written decision informing the petitioner or applicant that one or more convictions are grounds for license denial. The board's written decision will include all of the following:

- a. The convictions that are disqualifying;
- b. A written determination as to how each disqualifying offense is encompassed by a publicly available list identifying the convictions that may disqualify an applicant from receiving a license;
- c. A written determination that each disqualifying offense directly relates to the profession;
- d. A written finding regarding each rehabilitation factor specified in subrule 13.4(2);
- e. The earliest date the petitioner or applicant may submit a new petition for eligibility determination or license application;
- f. A statement indicating that evidence of rehabilitation may be considered upon reapplication, including any specific evidence the board would find persuasive on reapplication, if any; and
- g. Information regarding how to appeal the decision and have the matter set for hearing.

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193F—13.5(272C) Appeal. A petitioner or applicant may appeal a determination of ineligibility, or the denial of a license application, in the manner and time frame set forth in the board's written decision. A timely appeal will cause a nondisciplinary license denial contested case proceeding as provided in rule 193F—20.39(546,543D,272C) to be initiated. The board's rules governing nondisciplinary license denial contested case hearings will apply unless otherwise specified in this rule. Failure to timely appeal will result in the board's written decision becoming a final order.

13.5(1) A petitioner or applicant must appeal a determination of ineligibility or the denial of a license application in order to exhaust administrative remedies.

13.5(2) A file-stamped copy of the final order or judgment of conviction or plea of guilty constitutes conclusive evidence of a conviction.

13.5(3) The board shall have the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense by a preponderance of the evidence. Once established, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

13.5(4) A petitioner or applicant who is aggrieved or adversely affected by a final decision of the board rendered following a nondisciplinary hearing following a nondisciplinary license denial hearing must initiate further appeal to the superintendent in accordance with 193F—Chapter 17 in order to exhaust administrative remedies.

13.5(5) A petitioner or applicant may only seek judicial review of a determination of ineligibility or license application denial after the issuance of a final order following a contested case proceeding and following any appeal to or review by the superintendent, if taken or initiated within applicable time frames.

13.5(6) Judicial review of final agency action shall be in accordance with Iowa Code section 17A.19. [ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—13.6(272C) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

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These rules are intended to implement Iowa Code chapter 272C.

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