

655—3.11(272C) Use of criminal convictions in eligibility determinations and initial licensing decisions.**3.11(1) Definitions.**

“*Complete criminal record*” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor and regardless of the jurisdiction in which the offense occurred.

“*Conviction*” means 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 duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities 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*” means a license issued by the board.

3.11(2) License application. Unless an applicant for licensure petitions the board for an eligibility determination pursuant to subrule 3.11(3), the applicant’s convictions will be reviewed when the board receives a completed license application.

a. 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.

b. In order for the license application to be considered complete, an applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession.

c. An applicant must submit as part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the board.

d. 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 pursuant to Iowa Code section 272C.15.

e. An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

f. Any application fees paid will not be refunded if the license is denied.

3.11(3) Eligibility determination.

a. An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual’s convictions are disqualifying offenses that would render the individual ineligible for licensure. An individual with a conviction is not required to petition the board for an eligibility determination prior to applying for licensure.

b. To petition the board for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner shall submit all of the following:

- (1) A completed eligibility determination form;
- (2) The complete criminal record for each of the petitioner’s convictions;
- (3) A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should deem the petitioner rehabilitated;
- (4) All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- (5) Payment of a nonrefundable fee of \$25.

3.11(4) Appeal. A petitioner deemed ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board’s written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board’s rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the board’s written decision will become a final order.

a. An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

b. The contested case hearing shall be closed to the public, and the board's review of a proposed decision shall occur in closed session.

c. The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense. Upon the satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

d. A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

3.11(5) *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.

[ARC 6197C, IAB 2/23/22, effective 3/30/22]