

## **Texas State Board of Plumbing Examiners**

### **Board Rule – Revised November, 2003**

#### **Sec. 363.2. Consequences to the Applicant With Criminal Conviction**

(a) Authority:

(1) Under the authority of Chapter 53 and Chapter 1301, Sec. 1301.4521 of the Occupations Code, the Board may suspend, probate a suspension of, or revoke a registration, license or endorsement, disqualify a person from receiving a registration, license or endorsement, or deny to a person the opportunity to take a licensing or endorsement examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the occupation of registered and licensed individuals performing plumbing and plumbing inspections.

(2) Under the authority of Section 411.122 of the Government Code (as amended by HB 660, 78<sup>th</sup> Legislature), the Board may access the criminal history record information maintained by the Department of Public Safety and the Federal Bureau of Investigation, including the National Crime Information Center database. The Board may charge a fee to applicants for a registration, license or endorsement to recover its costs to obtain the information.

(b) Currently Incarcerated Applicants: The Board shall not issue a registration, license, or endorsement to an applicant and shall revoke the registration, license and endorsement of an individual if the applicant or individual is incarcerated due to a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(c) Factors in Determining Whether Conviction Relates to Occupation: In determining whether a criminal conviction directly relates to the occupation of registered and licensed individuals performing plumbing or plumbing inspections, the Board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license or registration to engage in plumbing or plumbing inspections;

(3) the extent to which a license or registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections.

(d) Additional Factors for the Board to Consider: In determining the fitness of a person who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections, the licensing authority shall consider, in addition to the factors listed in Sec. 363.2(c):

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the amount of time that has elapsed since the person's release from incarceration;

(5) the conduct and work activity of the person before and after the criminal activity;

(6) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(7) other evidence of the person's fitness, including letters of recommendation signed by the person making the recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides;

(C) current and previous employers stating that the employer has specific and complete knowledge of the applicant's criminal history and stating the reasons that the employer is recommending that the applicant be considered fit and not a threat to the public's health, safety and welfare; and

(D) any other person in contact with the convicted person.

(e) Responsibilities of the Applicant:

(1) The applicant has the responsibility to obtain and provide to the Board, the recommendations of the prosecution, law enforcement, correctional authorities, employers and others as specified by Section 363.2(d)(7).

(2) The applicant shall furnish proof in the form required by the Board that the applicant has:

(A) maintained a record of steady employment by submitting employment records and verification from employers;

(B) supported the applicant's dependents, if any, including records of court mandated child support payments, if applicable;

(C) maintained a record of good conduct;

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted; and

(E) successfully completed all court ordered or voluntary rehabilitation classes, courses or programs.

(3) The applicant shall submit to the Board a fully completed Supplemental Criminal History Information Form signed by the applicant.

(4) If the applicant has a conviction of a sexual nature, the applicant shall obtain and provide to the Board the written results of recently performed standard, nationally recognized testing and evaluations of the applicant, performed by a licensed professional therapist or counselor who is certified as a Registered Sex Offender Treatment Provider in the State of Texas, to determine the level of likelihood for the applicant to commit future crimes of a sexual nature.

(5) If required by the Board, the applicant shall meet all requirements necessary in order for the Board to access the criminal history record information under Section 363.2(a)(2), including submitting fingerprint information and paying the required fees.

(f) Proceedings Governed by Administrative Procedure Act: A proceeding before the Board to establish factors required to be considered in determining the fitness of a person who has been convicted of a crime is governed by Chapter 2001, Government Code.

(g) Guidelines to Determine Fitness: The Board shall issue guidelines relating to determining the fitness of a person who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections. The guidelines must state the reasons a particular crime is considered to relate to a particular registration, license or endorsement and any other criterion that affects the decisions of the Board.

(1) The Board shall file the guidelines with the Secretary of State for publication in the Texas Register.

(2) Amendments to the guidelines, if any, shall be issued at least annually.

(h) Enforcement Committee Review of Application: The Enforcement Committee may approve, without Board approval, the application for a license, endorsement, or registration of a person who has a criminal conviction, if the Enforcement Committee finds that the criminal conviction does not directly relate to the duties and responsibilities of the business of plumbing in accordance with the Board's rules and the guidelines adopted under Subsection 363.2(g). An applicant who has a criminal conviction may be requested to appear before the Enforcement Committee to present information relating to the applicant's criminal conviction.

(1) If the Enforcement Committee determines that an applicant is ineligible for a license, endorsement, or registration based on the applicant's criminal conviction, the Enforcement Committee shall give timely notice of the denial to the applicant to the applicant's last known address on file with the Board.

(2) The notice shall include the denied applicant's right to request, within 20 days of the mailing of the notice of denial, a hearing before an administrative law judge of the State Office of Administrative Hearings to review the Enforcement Committee's determination.

(A) Failure by the denied applicant to request a hearing under Section 363.2(h)(2) within 20 days of the mailing of the notice of denial renders the Enforcement Committee's decision final and;

(B) the denied applicant may not apply for a new registration, license or endorsement before the first anniversary date of the final denial.

(3) If the denied applicant requests a hearing under Section 363.2(h)(2) and after receipt of the administrative law judge's proposed findings of fact and conclusions of law, the Board shall determine the applicant's eligibility. The Board shall provide an applicant who is denied a registration, license or endorsement a written statement containing:

(A) the reason for the suspension, revocation, denial, or disqualification;

(B) the judicial review procedure provided by Section 363.2(i); and

(C) the earliest date the person may appeal the action of the licensing authority.

(4) If the applicant is denied as a result of a hearing requested under Section 363.2(h)(2), the applicant may not apply for a new registration, license or endorsement before the first anniversary date of the final denial.

(i) Judicial Review: A person whose license has been suspended or revoked or who has been denied a license or the opportunity to take an examination due to the person's criminal conviction and who has exhausted the person's administrative appeals may:

(1) file an action in the district court in Travis County for review of the evidence presented to the Board and the decision of the Board; and

(2) the petition for an action under this subsection must be filed not later than the 30th day after the date the Board's decision is final and eligible to be appealed.