

## **175:20-5-7. Disqualifying criminal history and opportunity for initial determination**

(a) Pursuant to 59 O.S. § 4000.1, the Board of Cosmetology and Barbering shall adopt a list of crimes that could disqualify a person from being licensed as a massage therapist. The Board shall adopt the list at its first meeting of the fiscal year and may modify the list as needed to protect public health and safety.

(b) The misdemeanors and felonies in the list could disqualify an individual because they substantially relate to the practice of massage therapy and pose a reasonable threat to public safety, health or welfare, as explained below.

(1) Crimes involving fraud, theft, lying, falsification and/or deception. Licensees may have unfettered access to their clients' financial information and valuables, including credit cards, checks, cash and jewelry. They also may have access to personal health information, from clients who disclose relevant health conditions or medications before treatment, including, for example, on intake forms. Massage therapy often occurs in a room where there is no direct supervision of the licensee, and where the client is in a state of undress and physically separated from his or her valuables. As a result, crimes involving fraud, theft, lying, falsification and/or deception are highly relevant to an individual's ability to provide safe massage therapy services.

(2) Crimes involving violence and/or threatening behavior, including sexual misconduct. Massage therapists frequently provide services to partially clothed or fully undressed clients, who are particularly vulnerable to exploitation. On the other hand, local news articles often report on police raids on massage establishments that involve prostitution or human trafficking. As a result, crimes involving violence and/or threatening behavior, including sexual misconduct, are highly relevant to an individual's ability to provide safe massage therapy services.

~~(b)~~(c) A person who has pleaded guilty, nolo contendere or been convicted of a crime on the list, or who has a criminal charge currently pending, may at any time, including before obtaining any required education or applying to sit for any necessary examination, request an initial determination as to whether the person's criminal history would potentially disqualify the individual from licensure as a massage therapist in Oklahoma. The request shall be in writing and shall include either a copy of the person's criminal history record; or a statement describing each conviction or plea, including the date of conviction or plea, the court of jurisdiction, and the sentence imposed. The person may submit any additional information, including, but not limited to, ~~information relevant to the person's current circumstances, the length of time since the completion of any sentence, including probation, evidence of rehabilitation, and testimonials or personal reference statements, as well as the person's professional aspirations~~

(1) The nature and seriousness of the offense;

(2) The amount of time that has passed since the offense;

(3) The age of the person at the time the offense was committed;

(4) Circumstances of the offense, including aggravating or mitigating circumstances of social conditions surrounding the commission of the offense;

(5) The nature of the specific duties and responsibilities for which the license is required;  
and

(6) Rehabilitation, including, among other things, evidence related to the person's compliance with conditions of community supervision, parole or mandatory supervision;

the conduct and work activity of the person; programming or treatment undertaken by the person; and testimonials or personal reference statements.

~~(e)~~(d) Upon receipt of a written request for consideration of a person's criminal history record, the Executive Director, the Chair of the Board of Cosmetology and Barbering, and the Chair of the Advisory Board, in consultation with Board legal counsel, shall evaluate the request and make an initial determination based upon the information provided. A notice of initial determination shall be issued within sixty (60) days from the date the request was received. If the person is not satisfied with the response, the person may request that the matter be ~~placed on the agenda of the Board's next regularly scheduled meeting~~set for hearing, consistent with the Board's rules of practice, in OAC 175:1-5.

~~(d)~~(e) The notice of initial determination shall be in writing and mailed to the requestor at the address provided in the request, and shall contain the following statements:

(1) Whether the person ~~appears~~is eligible for licensure at the current time based upon the information submitted by the requestor;

(2) Whether there is a disqualifying offense ~~prohibiting that would disqualify the person's licensure~~person from engaging in massage therapy at any the current time and a statement identifying such offense in the criminal history record or information submitted for consideration;

(3) Any actions the person may take to remedy ~~what appears to be a temporary~~ disqualification, if any;

(4) The earliest date the person may submit another request for consideration, if any; and

(5) A statement that the ~~notice of initial determination is only an initial determination for eligibility for licensure based upon the information provided by the requestor~~may be rescinded if, at the time a full application for a license is submitted, the applicant has subsequently pled guilty or nolo contendere to a crime, has pending criminal charges or has previously undisclosed criminal convictions. Additional information or intervening events may result in a different final determination.

~~(e)~~(f) A person who has pleaded guilty, nolo contendere or been convicted of a crime on the list adopted by the Board pursuant to this section, ~~or who has a criminal charge currently pending, shall~~may not be eligible for licensure for a period of ~~three~~at least five (5) years from the date of ~~the conviction, plea or conviction~~release from incarceration, whichever is later. ~~Applicants whose pleas or convictions occurred more than three years prior to the date of application for licensure shall be evaluated on a case by case basis.~~

(g)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 forty-five (45) days of the written request.