

NCEES Committee on Law Enforcement Recommendations

Evaluating an Applicant's Criminal History and Its Impact on Eligibility for Licensure

The NCEES 2008–09 Committee on Law Enforcement was given the following charge: *Evaluate the Model Law and Model Rules on how an applicant's criminal history can impact his or her eligibility for licensure. Make similar evaluation on criminal convictions against licensees. Develop guidelines for Member Boards to aid them in judging what types of and when criminal convictions would be grounds for denying a license or placing sanctions upon an existing license. Make recommendations for amendments to the Model Law and Model Rules as deemed appropriate.*

The committee felt that the NCEES *Model Law* and *Model Rules* adequately cover an applicant's criminal history as it relates to eligibility for licensure. The committee also felt that developing guidelines or a matrix to determine the types of criminal convictions that should impact licensure or the appropriate disciplinary action based on types of convictions is best left up to individual Member Boards. The committee noted that over the years several Member Boards have tried to develop disciplinary matrices and have overwhelmingly reverted back to a case-by-case review.

In place of guidelines identifying specific criminal convictions that should result in denial of a license or disciplinary sanctions, the committee developed guidelines for Member Boards for evaluating criminal convictions.

The NCEES *Model Law* states the following:

150.10 Grounds for Disciplinary Action

- A. The board shall have the power to suspend, revoke, place on probation, fine, recover costs, and/or reprimand, or to refuse to issue, restore, or renew a license, intern certification, or firm authorization to any licensee, intern, or firm holding a certificate of authorization that is found guilty of:
 - 1. Any fraud or deceit in obtaining or attempting to obtain or renew a certificate of licensure or certificate of authorization
 - 2. Any negligence, incompetence, or misconduct in the practice of engineering or surveying
 - 3. Conviction of or entry of a plea of guilty or nolo contendere to any crime that is a felony, whether or not related to the practice of engineering or surveying; and conviction of or entry of a plea of guilty or nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is dishonesty or which is directly related to the practice of engineering or surveying

Many states have questioned the relevance of a conviction for an offense committed five or more years ago to an individual's eligibility for licensure. The committee thought it is best to evaluate each conviction on a case-by-case basis. Some factors to consider when evaluating criminal convictions include:

- Type and seriousness of offense—Some convictions such as sex crimes and violent offenses may automatically result in denial of licensure or revocation of a professional license, as compared with misdemeanor offenses, which are typically less serious.
- The offender's rehabilitation—Has the individual completed probation or court-ordered treatment programs?
- The offender's chance of recidivism
- Whether the offense directly related to the offender's practice of engineering or surveying
- The age of the offender when the crime was committed
- The offender's criminal history
- The amount of time elapsed since the offense(s) occurred

The ultimate goal is to determine the individual's fitness for licensure.

As an example, recently a Member Board granted a license to an engineer from another state who disclosed on his application that he had a burglary conviction. However, the offense occurred over 15 years ago, and the applicant had completed his sentence, graduated from school, obtained a P.E. license, and practiced for 11 years without incident. There have also been several cases reported on Enforcement Exchange in which Member Boards have revoked licenses for convictions of child molestation and sexual assault. Although these offenses were not committed during the individuals' practice, the acts were deemed evidence that the licensees were not of good moral character and were unfit for licensure.

Conclusion

The committee felt that recommending specific sanctions for specific offenses might not be possible. We tend to view crimes differently. Likewise, similar crimes may contain an entirely different set of circumstances and facts; rarely, if ever, are two crimes identical. The committee felt it was appropriate for Member Boards to review violations on a case-by-case basis and fairly consider all the facts and circumstance before coming to a conclusion. This would allow boards to evaluate each case on its own merits.