

QUALITY ASSURANCE (“QA”) POSITION STATEMENT

RE: PRIOR CRIMINAL CONVICTIONS

In November of 2020, the language of 21 NCAC 68.0216 was revised to remove the previously enumerated categories of criminal convictions and corresponding sanctions with regard to applicants before this Board. However, the categories and sanctions identified in the language of 21 NCAC 68.0216 prior to the November 2020 revision of the Administrative Code may be utilized as precedent when considering criminal convictions.

Specifically, the categories and sanctions identified in 21 NCAC 68.0216 prior to November 2020 may be considered by the Board when weighing **the level of seriousness of the crime** in considering criminal convictions according to N.C. Gen. Stat. § 90-113.46A.

In the event an applicant before this Board has received prior criminal conviction(s), N.C. Gen. Stat. § 90-113.46A(b)(1)-(7) provides factors the Board shall consider regarding those criminal conviction(s) appearing on the applicant’s criminal history record. The factors include the following:

- 1) **The level of seriousness of the crime;**
- 2) The date of the crime;
- 3) The age of the person at the time of the conviction;
- 4) The circumstances surrounding the commission of the crime, if known;
- 5) The nexus between the criminal conduct of the person and the job duties of the position to be filled;
- 6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed; and
- 7) The subsequent commission by the person of a crime as defined in G.S. 90-113.31A(14).

When considering the first factor, **the level of seriousness of the crime**, the Board may consider the language of 21 NCAC 68.0216, prior to November of 2020, regarding background investigations. While not binding, the Board considers the categories and sanctions identified in the previously enacted language of the Administrative Code Provision as precedent when weighing criminal convictions appearing on an applicant’s criminal history record, as outlined below.

CATEGORY I: An applicant with a Category I conviction shall have *at least 15 years elapsed since the applicant has completed all aspects of his or her sentence* received as a result of the last Category I conviction to be eligible for registration, certification, or licensure.

Category I convictions include the following:

- A. Murder, attempted murder, or manslaughter of a child 16 or under; or
- B. Sexual assault, including attempted sexual assault, rape, indecent liberties with a child, molestation, or sexual assault of a child, or the attempt to commit any of the aforementioned crimes.

CATEGORY II: An applicant with a Category II conviction shall have *at least 10 years elapsed since the applicant has completed all aspects of his or her sentence* received as a result of the last Category II conviction to be eligible for certification or licensure. Notwithstanding a Category II conviction, an applicant may be registered *no sooner than five years* following the date the applicant has completed all aspects of his or her sentence.

Category II convictions include the following:

- A. Manslaughter of a person over 16 years of age;
- B. Kidnapping or attempted kidnapping;
- C. Arson of an occupied dwelling;
- D. Robbery with a dangerous weapon or attempted robbery with a dangerous weapon;
- E. Felony assault other than a sexual assault;
- F. First degree burglary;
- G. Trafficking in controlled substances as it is defined in Article 5 of Chapter 90 of the General Statutes; or
- H. Any other felony that results in bodily or emotional harm to another.

CATEGORY III: An applicant with a Category III conviction shall have *at least five years elapsed since the applicant has completed all aspects of his or her sentence* received as a result of the last Category III conviction to be eligible for certification or licensure. Notwithstanding a Category III conviction, an applicant may be registered *immediately* following the date the applicant has completed all aspects of his or her sentence.

Category III convictions include the following:

- A. Three or more DWIs within the most recent seven years;
- B. Assault (misdemeanor);
- C. Felony larceny;
- D. Fraud, obtaining property by false pretenses, financial transaction card theft;
- E. Unauthorized use of an aircraft;
- F. Unlawfully carrying a weapon;
- G. Theft of a vehicle;
- H. Falsification of government documentation (felony);
- I. Arson of an unoccupied dwelling or other building within the curtilage;
- J. Burglary other than in the first degree;

- K. Sale and delivery violations of the North Carolina Controlled Substances Act resulting in a felony conviction;
- L. Embezzlement;
- M. Forgery;
- N. Any burning of property prosecuted as a felony;
- O. Robbery not with a dangerous weapon;
- P. Perjury;
- Q. Felony receiving and possessing stolen goods;
- R. Breaking and entering; or
- S. Any other felony not otherwise categorized.

CATEGORY IV: An applicant with a Category IV conviction shall have *at least three years elapsed since the applicant has completed all aspects of his or her sentence* received as a result of the last Category IV conviction to be eligible for certification or licensure. Notwithstanding a Category IV conviction, an applicant may register *immediately* following the date the applicant has completed all aspects of his or her sentence.

Category IV convictions include the following:

- A. Any combination of three or more Category V offenses, except offenses occurring within the same incident shall be considered a single offense;
- B. Two DWIs within the most recent seven years;
- C. Possession of a controlled substance;
- D. Injury or damage to property;
- E. Resisting arrest;
- F. Larceny;
- G. Prostitution;
- H. Criminal mischief;
- I. Driving while license suspended or revoked;
- J. Falsification of government documents;
- K. Any misdemeanor burning; or
- L. Any other misdemeanor not otherwise categorized.

CATEGORY V: An applicant with a Category V conviction shall have *at least one year elapsed since the applicant has completed all aspects of his or her sentence* received as a result of the last Category V conviction to be eligible for certification or licensure. Notwithstanding a Category V conviction, an applicant may register *immediately* following the date the applicant has completed all aspects of his or her sentence.

Category V convictions include the following:

- A. One DWI within the most recent seven years;
- B. Disorderly conduct;
- C. Intoxicated and disruptive in public;
- D. Three or more incidents resulting in worthless check convictions; or
- E. Shoplifting or concealment.