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Regulatory licensure with a criminal record

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Preface

There has been a lot written about the effect of criminal offenses in regulatory licensing; Texas Occupations Code Ch. 53 is over 20 years old. The substance and thoughts in this paper are, for the most part, a combination of prior CLE papers and material prepared by some of the most outstanding administrative attorneys in Texas. I owe a debt of gratitude to those who've previously digested and presented insightful analysis on this topic, including Jennifer Riggs, Randy Leavitt, Jon Porter, Trevor Theilen, Joseph Marcee, Matt Rienstra, Tim Weitz, Della Lindquist, and Franklin Hopkins, as well as the many agency attorneys such as Lisa Collier who have worked to produce easy to understand guidelines to aid attorneys and the public in understanding how criminal offenses affect regulated industries and the individuals they employ.

Texas agencies, boards, commissions, and departments issue hundreds of different types of occupational and regulatory licenses, delivered through nearly as many different licensing bodies. The qualifications for any particular category of license are constantly subject to revision by the issuing agency, making it nearly impossible for this paper to explain the specific qualifications required for an occupational license. The law and rules applicable to any particular license depend on the license type and/or the issuing agency. Therefore, I encourage any reader to research all particular laws and agency rules when facing a specific fact scenario for their agency or client. This paper aims to furnish a rough, general method of approaching that research.

How to analyze the effect of a criminal charge or conviction on a licensee.¹

Any analysis requires a review of two statutes: 1) the Texas Occupations Code Chapter 53, which provides a general, overriding structure for occupational licenses and 2) the specific statutory framework (and/or its regulatory extensions) that may exist for occupational license at hand. To the extent a licensing authority's specific statute (or rule) imposes stricter licensing requirements than Chapter 53, those stricter requirements will dictate the outcome of your analysis. So while an analysis usually begins with Chapter 53, it must always include a review of the agency's specific licensing standards. A side-by-side comparison between Chapter 53 and the agency's statutes and rules is necessary to determine which licensing standard imposes more severe sanctions for criminal offenses.

Chapter 53 is the general occupational licensing statute that applies for issuance of most licenses. Even with licenses that are not directly controlled by Chapter 53, this statute sets out foundational principles and limitations for most occupational licenses. While a license

¹ "Licensee" is the noun used in this paper to generally describe an individual who is applying for or who holds government-issued regulatory permission to engage in an otherwise restricted activity, regardless of whether that permission is characterized as a license, registration, permit, certification, etc.

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