


**Council on Licensing,
Enforcement and Regulation**


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MORAL TURPITUDE

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MORAL TURPITUDE OVERVIEW

1. **Good Moral Character and Moral Turpitude;**
2. **Decision to take action;**
3. **Rehabilitation.**


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"Good Moral Character" Statutes

- Competency component – Applicant must be **qualified**
 - Rigid Standard: Examination / Education
- Character component – Applicant must possess **"good moral character"**
 - Elusive Standard: "Can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer." *Konigsberg v. State Bar of CA*, 353 U.S. 252, 263 (1957).

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Statutory Definitions of Good Moral Character

- **South Dakota:** "Such character as will enable a person to discharge the fiduciary duties of an architect ... to his client and to the public for the protection of health, safety and welfare."
- **Alabama:** "An absence of proven conduct or acts which have been historically considered manifestations of moral turpitude."
- **Illinois:** "the moral quality of a person that constitutes his intrinsic nature."

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Indicators of Moral Character – Commonly Evaluated Factors

Good Moral Character Indicators:

- Honesty, Fairness, Trustworthiness, etc.
- Mental/Emotional Stability, Candor in dealing w/ authorities, etc.
- Community ties, Support of dependents, Fiscal responsibility, etc.

Bad Moral Character Indicators:

- Dishonesty, Noncompliance w/ authorities, Irresponsibility, etc.
- Spouse/Child abuse, Failure to pay child support, Alcohol/Drugs, etc.
- Conviction of crimes involving breach of duty or moral turpitude

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Crimes of Moral Turpitude (M.T.)

- Conviction of a crime of M.T. by itself indicates and, in some states, can even prove bad moral character.
- **Various Definitions:**
 - "Crimes committed recklessly and with a conscious disregard of a substantial and unjustifiable risk to the life and safety of others..."
 - "Baseness, vileness, or depravity in the private and social duties owing to one's fellow person, or society in general, contrary to accepted and customary rules, and is dependent upon depraved or vicious motives..."
- The **intent behind the crime** becomes the key

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Examples of Crimes of Moral Turpitude

- Murder, Prostitution, Rape, Gross indecency;
– *But Not:* Simple Assault, D.U.I., Libel, Nuisance, Riot
- Bribery, Mail Fraud, Forgery, Tax Evasion;
– *But Not:* Desertion from Armed Forces, Liquor/Lottery Violations
- Fraud, Larceny, Robbery, Theft, Embzzlement;
– *But Not:* Breaking and Entering, Juvenile Delinquency, Trespassing

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Relation to Licensed Activity

- Some states require a “substantial” or “rational connection” between the bad moral acts and the licensed activity.
– **BUT** courts often give broad statutory interpretation.

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Reform Ideas


- Codified Standards
– Nationally accepted code agreed upon and adopted by the states
– More predictable
– Conserving time, judicial energy, and economic resources

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Elimination of Good Moral Character Standard:


– In 1974, California amendment:

- a license “shall not be denied, suspended, or revoked on the grounds of lack of good moral character or any similar ground relating to an applicant’s character, reputation, personality, or habits.”
- Amendment only applies to evidence of bad moral character *other than criminal convictions*.

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DECISION TO TAKE ACTION

1. Set up sufficient standards to ensure rational and consistent results in the application of statute concerning moral turpitude;
2. Is the law regarding revocation for a crime of moral turpitude discretionary;
3. Consider whether your state requires a showing of rehabilitation.

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SUFFICIENT STANDARDS

- Ensure rational and consistent results in the application of the statute.
- Ensure adequate procedural safeguards and due process notice.
- Determine whether an expert or other witnesses will be needed.
- Consider whether the review should be done by committee or individual.

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Sufficient Standards cont'd

- Create a record to show how the regulator reviewed the crime.
- Know the factors the regulator considers and be consistent in the review of such factors.
- Retain any documents or information reviewed in making the decision for the record.

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Sufficient Standards cont'd

- Consider whether summary suspension is warranted on an existing license:
 - Does the licensee pose a danger to the public health, safety or welfare, or deliberately and willfully violated provisions of the statute;
 - While the burden is on the licensee to show rehabilitation, if the regulator needs an expert or witnesses to testify a shortened time frame for the hearing may be impractical.

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Sufficient Standards cont'd

- If more information is needed before a decision can be made, require the licensee to provide such documentation along with evidence the licensee has been rehabilitated.
- Decide whether an expert or other witnesses will be necessary for hearing.

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Sufficient Standards cont'd

- The agency, in the notice to the applicant or licensee, should articulate the basis for its determination, sufficient for judicial review to occur.
- The agency should be prepared to present evidence regarding the basis for the denial or revocation. Denial due solely to the fact of a conviction is likely to be overturned.

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DISCRETIONARY OR MANDATORY LAW


- If State law is *discretionary* regarding whether the regulator may take action if the licensee has a crime of moral turpitude, then the standards outlined above are suggested.
- If State law is *mandatory* (the regulator *shall* revoke), can probably get revocation on a Motion for Summary Judgment (rehabilitation, likely not a factor).
- Some state statutes do not refer to "moral turpitude".

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Moral Turpitude statute in Colorado


- The Division of Insurance **may** seek revocation of an insurance producer license for:
 - Conviction of a felony or misdemeanor involving moral turpitude;
 - "moral turpitude" shall include any sexual offense against a child as defined in section 18-3-411, C.R.S.

Section 10-2-801(1)(g), C.R.S.

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Moral Turpitude Statute

- The Division of Insurance **shall** revoke the license of a bail bond agent for a:
 - Conviction of a felony, a guilty plea to a felony, or a plea of nolo contendere to a felony within the last ten years regardless of whether the conviction or plea resulted from conduct in or conduct related to the bail bond business. Section 12-7-106(1)(e), C.R.S.

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States that do not have a Moral Turpitude disqualifier

- For example, in Colorado the licensing statute for the Board of Nursing does not make any reference to crimes of moral turpitude, but does allow the board to discipline for any felony or conduct in violation of Title 18 (Criminal Code).
- The Board is required to consider rehabilitation if it decides to take action.

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CRIMINAL BACKGROUND CHECK

- Most licensing disciplines do not require.
- Colorado Bureau of Investigation
 - Review of fingerprint card at time of licensure for bail bond agents, massage therapists, lawyers;
 - CBI provides notification to licensing agency of any arrests after licensure.


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DENIAL OF LICENSE/RETROACTIVE APPLICATION

- Legislation to allow denial or revocation due to a felony or misdemeanor involving Moral Turpitude:
 - Prospective or retroactive application, depends on the wording of the legislation;
 - *Ficarra v. Department of Regulatory Agencies, Division of Insurance, 849 P.2d 6 (Colo. 1993)*, allowed retroactive application of the denial of a license for the conviction of a felony.


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Has the Licensee or Applicant Been Rehabilitated?

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Effect of criminal conviction on employment rights.

- Section 24-5-101, C.R.S.
(1)(a) Except as otherwise provided . . . , the fact that a person has been convicted of a felony or other offense involving moral turpitude shall not, in and of itself prevent the person from applying for and obtaining public employment or from applying for and receiving a license, certification, permit, or registration required by the laws of this state to follow any business, occupation, or profession” . . .

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Section 24-5-101, C.R.S. (cont'd)

(2)Whenever any state or local agency is required to make a finding that an applicant for a license, certification, permit, or registration is a person of good moral character as a condition to the issuance thereof, the fact that such applicant has, at some time prior thereto, been convicted of a felony or other offense involving moral turpitude, and pertinent circumstances connected with such conviction, shall be given consideration in determining whether, in fact, the applicant is a person of good moral character at the time of the application." . . .

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Section 24-5-101, C.R.S. (cont'd)
Policy

. . . "The intent of this section is to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society".

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Rehabilitation Factors: Offense

- The date of the offense
- The nature and seriousness of the offense
- The applicant's or licensee's age at the time of the offense
- How much time has elapsed since the offense
- How many offenses has the applicant or licensee committed?

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Rehabilitation Factors: Nexus to license

- What are the public protection concerns related to the license at issue?
- What is the nexus between the offense and the license at issue?
- Is it "substantially related to", or "rationally connected to" the particular occupation for which the applicant is seeking a license?

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Rehabilitation Factors: Status at the time of application

- How much time has passed since the offense?
- What is the licensee's or applicant's current status?
- What has the licensee or applicant demonstrated in terms of ability to comply with and respect for the law? (Ex: payment of restitution and fines ordered by the court; successful completion of sentence including incarceration and/or probation; recommendations from law enforcement and corrections officials and from the public.)

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The New York Approach

- N.Y. Correct. Law §§ 751- 754
No application for licensure or employment shall be denied or adverse action taken on a license held because of a previous conviction for one or more offenses or by reason of a finding of lack of "good moral character" based on the fact of a conviction or convictions.

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Exceptions

- (1) There is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or
- (2) The issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

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Factors to be considered in making a decision (mandatory)

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.

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Factors to be considered in making a decision (mandatory) (cont'd)

- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.

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Factors to be considered in making a decision (mandatory) (cont'd)

- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

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Factors to be considered in making a decision (mandatory) (cont'd)


- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

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Certificate of relief from disabilities or certificate of good conduct


N.Y. Correct. Law § 700-701

- States that an ex-offender is in good standing with the court or parole board.
- Creates a presumption of rehabilitation.

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Three conditions must be met:

- Must have been convicted of an offense, but not more than one felony.
- Must be consistent with the rehabilitation of the eligible offender.
- Relief to be granted by the certificate must be consistent with the public interest.

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Practice Pointers

- Review all bases for denial or discipline (not solely criminal conduct).
- Consider use of Motions for Summary Judgment to limit the issues at hearing (and to keep litigation costs down.)
- Consider the use of written policies to provide consistency with the Boards' review.

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