



# Reinstatement Statement



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Boards of social work are created and empowered to protect the public by regulating the profession. These immense responsibilities fall on volunteer board members who are placed in a position of authority over the practice of the profession and are expected to represent the interests of the consuming public. One of these board responsibilities includes the issuance and renewal of licenses. Of course, boards are also involved in disciplinary actions and may be the ultimate decision makers in determining the fate of persons accused of violating the practice act and/or regulations. It is imperative that regulatory boards appropriately draft and execute final disciplinary orders regarding persons found to have violated the law. Such orders will address many factors, including:

- findings of fact
- conclusions of law
- burden of proof
- sanctions
- reinstatement rights, if any
- publicity of the action
- appeal rights, if applicable

Part and parcel to the final adverse action (and assuming that the licensure revocation is not permanent), is the right of the disciplined person to seek reinstatement of licensure. Reinstatement petitions can be complex and involve significant

analyses of the final adverse action that led to the loss of practice privileges. Petitioners seeking reinstatement bear the burden of substantiating the satisfaction of all delineated parameters of the original board order. Generally, boards are granted wide latitude to fashion sanctions, and substantiation of reinstatement criteria is critical to this public protection mission.

## Counsel's Column

A person seeking reinstatement has the burden of substantiating eligibility for licensure. A petition usually addresses the final adverse action and completion of the criteria set forth in such order. In the event the criteria has not been established, the board has the right (or perhaps obligation) to deny the request. Denial of a petition may trigger appeals and an analysis of the board findings. Consider the following.

In 1997, a licensed professional counselor (Respondent) pled guilty to charges of billing and insurance fraud regarding claims to the federal government. As a result, the Respondent was placed on probation for five years and he was prohibited from participating in Medicaid, Medicare, or any other federal health care program.

At the time of his arrest in 1997, the Respondent was under investigation by the Mississippi State Board of Examiners for Licensed Professional Counselors (Board) for complaints related to inappropriate and intimate relationships with three patients and misrepresenting himself as a licensed clinical psychologist. Upon advice of counsel, the Respondent surrendered his license to the Board.

In 2002, the Respondent was arrested for embezzlement and also arrested on another occasion for theft. As a result of being found to have violated his criminal probation, the Respondent was imprisoned. He was released from prison in 2003. In August 2010, the Respondent applied to the Board for reinstatement of his license as a professional counselor. In January 2011, the Board issued a notice advising the Respondent that he would be afforded a hearing to allow him to show cause as to why his application should not be denied.

At the hearing, the Respondent testified, as did several character and professional witnesses. In September 2011, the Board issued an order denying his application for reinstatement. The Circuit Court affirmed the denial of licensure and the Respondent appealed the matter to the Court of Appeals of Mississippi. On appeal, the court first addressed the standard of review and emphasized the rebuttable presumption in favor of the agency's decision and that the court would not substitute its judgment for that of the Board.

The Respondent argued that the denial of his application was not supported by substantial evidence

and therefore, the decision was arbitrary and capricious. Substantial evidence has been defined by the Mississippi courts as meaning more than a mere scintilla of suspicion. Using that definition as its benchmark, the court turned its attention to the statute. Mississippi law requires applicants for licensure to be of good moral character. Further, the statute allows for the Board to suspend, revoke, or refuse to issue a license to those convicted of a felony.

In response to such legislation, the Board developed guidelines for determining when and whether convicted felons may be issued a license. The guidelines promulgated into regulations call for the immediate denial of licensure or renewal if an applicant has been convicted of any felony or misdemeanor involving moral turpitude. While subject to debate, it appears the court interpreted the moral turpitude element to modify both felony and misdemeanor convictions. An alternative interpretation would be to consider any felony to be a disqualifying event as well as those misdemeanors involving moral turpitude.

The regulations also identify what factors are to be considered when determining a crime of moral turpitude. They include:

- the age at which the crime was committed
- the circumstances surrounding the crime
- the length of time since the crime
- the applicant's subsequent work history
- employment references
- character references
- any other evidence

demonstrating that the applicant does not pose a threat to the health or safety of the public

In the current case, the Board had found that although the crime occurred 14 years earlier, the Respondent exhibited a disregard for federal law as well as the laws of Mississippi. Further, when the crime occurred, the Respondent was an adult and not a youth and his conduct was serious, egregious, and closely and directly related to his fitness and trustworthiness. As noted by the Board, "[t]he deceptive, dishonest and exploitive acts that formed the basis of [Respondent's] conviction demonstrate untrustworthiness and a lack of fitness to carry out... duties and functions of an LPC in the State of Mississippi."

In addition, the court noted that the Board considered the fact that the Respondent had his counseling certification revoked by the National Board of Certified Counselors, violated his probation, served 10 months in prison, had his access to Federal programs indefinitely suspended, and had several complaints pending before the Board at the time he surrendered his license. Based upon these factors, the court found the Board ruling to be supported by substantial evidence and affirmed the denial of reinstatement petition.

This case presents a good example of how good moral character can be assessed and used to determine licensure eligibility. Such an analysis can occur during an initial licensure application, renewal, or reinstatement petition. Equally important is the issue of the voluntary surrender. At such time of a "surrender," the Board should insist on the entry of a consent/settlement agreement whereby

the parameters of reinstatement are addressed. Boards are encouraged to require a settlement agreement as part of a resolution of a complaint, thereby turning a surrender into a consent agreement. Under those circumstances, the parties are bound by a contractual agreement, thus modifying the legal arguments.

***Hale v. Mississippi State Board of Examiners for Licensed Professional Counselors***, 130 So. 3d 1180, 2014 Miss. App. LEXIS 42 (App. Ct. MS 2014)