

**43-1-19 - Right of Board to Records for
Investigation**

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Code of Georgia Annotated
Title 43. Professions and Businesses (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

Ga. Code Ann., § 43-1-19

§ 43-1-19. Refusal to grant licenses; revocation of licenses

Effective: July 1, 2016

Currentness

(a) A professional licensing board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this Code section, or under the laws, rules, or regulations under which licensure is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph, paragraph (4) of this subsection, and subsection (q) of this Code section, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in

this paragraph and subsection (q) of this Code section, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice a business or profession licensed under this title revoked, suspended, or annulled by any lawful licensing authority other than the board; had other disciplinary action taken against him or her by any such lawful licensing authority other than the board; was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public that materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title or is of a nature likely to jeopardize the interest of the public; such conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness. Such conduct or practice shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by a professional licensing board to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority without regard to whether the violation is criminally punishable when such statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title and when the licensee or applicant knows or should know that such action violates such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for so long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness or the use of alcohol, drugs, narcotics, chemicals, or any other type of material;

(11) Failed to comply with an order for child support as defined by Code Section 19-11-9.3; it shall be incumbent upon the applicant or licensee to supply a notice of release to the board from the child support agency within the Department of Human Services indicating that the applicant or licensee has come into compliance with an order for child support so that a license may be issued or granted if all other conditions for licensure are met; or

(12) Failed to enter into satisfactory repayment status and is a borrower in default as defined by Code Section 20-3-295; it shall be incumbent upon the applicant or licensee to supply a notice of release to the board from the Georgia Higher Education Assistance Corporation indicating that the applicant or licensee has entered into satisfactory

repayment status so that a license may be issued or granted if all other conditions for licensure are met.

(b) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section.

(c) For purposes of this Code section, a professional licensing board may obtain, through subpoena by the division director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When a professional licensing board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to the business or profession licensed by the board, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of such license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;

(7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or

(8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, a professional licensing board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of a professional licensing board shall be had solely in the superior court of the county of domicile of the board. The court may assess reasonable and necessary attorney's fees and expenses of litigation in any such review if, upon the motion of any party or the court itself, it finds that an attorney or any party aggrieved by an action of the board appealed such action of the board or any part thereof when such appeal lacked substantial justification or when such appeal or any part thereof was interposed for delay or harassment or if it finds that an attorney or aggrieved party unnecessarily expanded the proceeding by other improper conduct. As used in this subsection, the term "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(g) In its discretion, a professional licensing board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section or the laws relating to the licensed business or profession.

(h)(1) The division director is vested with the power and authority to make, or cause to be made through employees or agents of the division, such investigations as he or she or a respective board may deem necessary or proper for the enforcement of the provisions of this Code section and the laws relating to businesses and professions licensed by that board. Any person properly conducting an investigation on behalf of a professional licensing board shall have access to and may examine any writing, document, or other material relating

to the fitness of any licensee or applicant. The division director or his or her appointed representative may issue subpoenas to compel access to any writing, document, or other material upon a determination that reasonable grounds exist for the belief that a violation of this Code section or any other law relating to the practice of the licensed business or profession subject to regulation or licensing by such board may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the division director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) If a licensee is the subject of a board inquiry, all records relating to any person who receives services rendered by that licensee in his or her capacity as licensee shall be admissible at any hearing held to determine whether a violation of this chapter has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a person who received those services shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(5) When a member of the public files a complaint with a professional licensing board or the division director against a licensee, within 30 days after the conclusion of the investigation of such complaint, the professional licensing board or the division director shall notify the complainant of the disposition of such complaint. Such notification shall include whether any action was taken by the board with regard to such complaint and the nature of such action. In addition, the division director and the board shall upon request by the complainant advise the complainant as to the status of the complaint during the period of time that such complaint is pending.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee

or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice a business or profession licensed under this title or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to a professional licensing board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice the business or profession licensed by the board shall be immune from civil and criminal liability for so testifying.

(j) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of such chapter shall not be required, but the applicant or licensee shall be allowed to appear before the board if he or she so requests. A board may resolve a pending action by the issuance of a letter of concern. Such letter shall not be considered a disciplinary action or a contested case under Chapter 13 of Title 50 and shall not be disclosed to any person except the licensee or applicant.

(k) If any licensee or applicant after reasonable notice fails to appear at any hearing of the professional licensing board for that licensee or applicant, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee or applicant or served by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is served by certified mail or statutory overnight delivery and is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the division director, or his or her designee, shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon that director, or that director's designee, shall be deemed to be service upon the licensee or applicant.

(l) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of such license, subject to reinstatement in the discretion of a board. A board may restore and reissue a license to practice under the law relating to that board and, as a condition thereof, may impose any disciplinary sanction provided by this Code section or the law relating to that board.

(m) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorporated or unincorporated associations, corporations, limited liability companies, or other associations of any kind whatsoever.

(n) Regulation by a professional licensing board of a business or profession licensed under this title shall not exempt that business or profession from regulation pursuant to any other applicable law, including but not limited to Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

(o) Subsections (a), (d), and (e) of this Code section shall be supplemental to and shall not operate to prohibit any professional licensing board from acting pursuant to those provisions of law which may now or hereafter authorize other disciplinary grounds and actions for that particular board. In cases where those other provisions of law so authorize other disciplinary grounds and actions but subsection (a), (d), or (e) of this Code section limits such grounds or actions, those other provisions shall apply so long as the requirements of subsection (q) of this Code section are met.

(p)(1) Notwithstanding any other provision of this Code section or title, when an applicant submits his or her application for licensure or renewal, together with proof of completion of a drug court division as set forth in Code Section 15-1-15, a mental health court division as set forth in Code Section 15-1-16, a veterans court division as set forth in Code Section 15-1-17, an operating under the influence court division as set forth in Code Section 15-1-19, or a family treatment court division as set forth in Code Section 15-11-70, a board shall issue the applicant a probationary license under the terms and conditions deemed appropriate by such board.

(2) Paragraph (1) of this subsection shall not supersede a board's consideration of an applicant's other prior criminal history or arrests or convictions that occur subsequent to completion of a court division identified in paragraph (1) of this subsection.

(q)(1) Notwithstanding paragraphs (3) and (4) of subsection (a) of this Code section or any other provision of law, no professional licensing board shall refuse to grant a license to an applicant therefor or shall revoke the license of a person licensed by that board due solely or in part to a conviction of any felony or due to any arrest, charge, and sentence for the

commission of any felony unless such felony directly relates to the occupation for which the license is sought or held.

(2) In determining if a felony directly relates to the occupation for which the license is sought or held, the professional licensing board shall consider:

(A) The nature and seriousness of the felony and the relationship of the felony to the occupation for which the license is sought or held;

(B) The age of the person at the time the felony was committed;

(C) The length of time elapsed since the felony was committed;

(D) All circumstances relative to the felony, including, but not limited to, mitigating circumstances or social conditions surrounding the commission of the felony; and

(E) Evidence of rehabilitation and present fitness to perform the duties of the occupation for which the license is sought or held.

Credits

Laws 1984, p. 552, § 1; Laws 1990, p. 1965, § 2; Laws 1993, p. 123, § 4; Laws 1994, p. 97, § 43; Laws 1996, p. 453, § 13; Laws 1996, p. 776, §§ 1, 2; Laws 1997, p. 677, § 2; Laws 1998, p. 1094, § 10; Laws 2000, p. 1589, § 3; Laws 2000, p. 1706, § 6; Laws 2003, Act 178, § 1, eff. May 31, 2003; Laws 2009, Act 102, § 2-2, eff. July 1, 2009; Laws 2015, Act 74, § 3-1, eff. July 1, 2015; Laws 2016, Act 460, § 10-1, eff. July 1, 2016; Laws 2016, Act 625, § 43, eff. May 3, 2016.

Notes of Decisions (5)

Ga. Code Ann., § 43-1-19, GA ST § 43-1-19

The statutes and Constitution are current through Act 284 of the 2018 legislative session. The statutes are subject to changes by the Georgia Code Commission.