

Kansas Administrative Regulations

State Board of Mortuary Arts

Article 5.—Administrative Hearings and Disciplinary Action

63-5-3. Potentially disqualifying civil and criminal records; advisory opinion; fee.

(a) For purposes of this regulation, "conviction" shall mean a judgment or order of guilt by a court of competent jurisdiction in any state, or a subdivision thereof, or territory of the United States, by a court of the United States, or by a military court martial pursuant to the uniform code of military justice.

(b) The following criminal records may disqualify an applicant from receiving a license:

(1) A conviction of any offense classified as a felony in the jurisdiction in which the conviction occurred;

(2) a conviction of criminal desecration as defined in K.S.A. 2018 Supp. 21-6205, and amendments thereto, or a crime defined as substantially similar in the jurisdiction in which the conviction occurred;

(3) a conviction of any offense classified as a class A misdemeanor, or a similar classification in the jurisdiction in which the conviction occurred, that involves any of the following:

(A) A crime whose victim was a client, customer, or other individual with whom the applicant had a professional or fiduciary relationship;

(B) a crime that occurred at the applicant's work site or while the applicant was on work duty;

(C) a crime involving fraud, theft, or misappropriation of another person's money, property, or services;

(D) giving a worthless check or causing unlawful prosecution for a worthless check;

(E) counterfeiting;

(F) criminal use of a financial card;

(G) a crime classified as a sex offense or requiring registration as a sex offender by the jurisdiction in which the conviction occurred;

(H) a crime involving assault, battery, domestic battery, battery of a law enforcement officer, sexual battery, stalking, or criminal restraint as defined by the jurisdiction in which the conviction occurred;

(I) a crime involving promoting obscenity, promoting material to minors that is harmful, or promoting prostitution;

(J) a crime that involved knowingly violating a protection from abuse order, a protective order, or a restraining order;

(K) cruelty to animals;

(L) a crime involving the unlawful use, possession, or distribution of any illegal drug or controlled substance;

(M) a crime involving the unlawful use or possession of paraphernalia with intent to use to manufacture, cultivate, plant, propagate, harvest, test, analyze, or distribute a controlled substance;

(N) a crime involving harassment by telephone, any telecommunications device, or telefacsimile communication;

(O) unlawful administration of a substance as defined in K.S.A. 2018 Supp. 21-5425, and amendments thereto, or defined as substantially similar in the jurisdiction in which the conviction occurred;

(P) driving under the influence of drugs or alcohol, or any other crime in which the applicant was intoxicated when the applicant committed the crime;

(Q) a crime involving the abuse, neglect, or exploitation of a child, elderly person, or disabled person as defined by the jurisdiction in which the conviction occurred; or

(R) a crime involving the unlawful use, possession, distribution, or discharge of a firearm; and

(4) conviction of a misdemeanor offense that meets both of the following conditions:

(A) The crime involved at least one of the circumstances described in paragraph (b)(3); and

(B) one of the following conditions is met:

(i) Fewer than five years have passed since the applicant completed the applicant's sentence, including any term of incarceration, probation, or community supervision or payment of any fine, fees, or restitution; or

(ii) the applicant has been convicted of another crime in the five years immediately preceding the date of the application for license.

(c) Civil or administrative records that may disqualify an applicant from receiving a license shall be any records of any court or administrative agency judgment, order, or a settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the mortuary arts act or any of the implementing regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied the judgment, order, or settlement agreement.

(d) Any individual with a criminal, civil, or administrative record described in this regulation may submit a petition on a form provided by the board for an informal, advisory opinion concerning whether the individual's civil, administrative, or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil, administrative, or criminal record, including a copy of each court or administrative record or any settlement by the parties;

(2) an explanation of the circumstances that resulted in the civil, administrative, or criminal record; and

(3) a check or money order in the amount of \$50.00.

(Authorized by K.S.A. 65-1712, 65-1723, 65-1730, 65-1766, and 74-120; implementing K.S.A. 65-1751, 65-1766, and 74-120; effective March 8, 2019.)

***** Authenticated Kansas Administrative Regulation *****