

**BOARD OF LAW EXAMINERS GUIDELINES FOR DETERMINING
CHARACTER AND FITNESS AND OVERSEEING
PROBATIONARY LICENSE HOLDERS**

I. INTRODUCTION

Every person seeking admission to the Texas Bar must file a complete Application for Admission with the required fees. Texas law students must also timely file a Declaration of Intention to Study Law with the required fees. Applicants who believe they may have matters potentially affecting the determination of their character and fitness for admission to the Bar are strongly encouraged to file a Declaration or Application as early as possible so that these issues may be resolved as soon as practicable and without causing a delay in the licensing process. *See Rules 6, 9 and 18, Rules Governing Admission to the Bar of Texas.*

II. PURPOSE OF GUIDELINES

These Guidelines are designed in accordance with section 82.039(a)(1) of the Texas Government Code to assist the Board of Law Examiners in making decisions involving character and fitness issues related to the licensing of attorneys in Texas and in overseeing probationary license holders. The purpose of these Guidelines is to promote: (1) consideration of factors relevant to determinations of an Applicant's present good moral character and fitness; (2) consideration of the appropriate weight of such factors in light of the stated goal to exclude Applicants whose character traits or current fitness indicate a likelihood of injury to future clients, the obstruction of justice, or a violation of the Texas Disciplinary Rules of Professional Conduct; and (3) consistency in decisions involving the same or similar facts or issues relating to character and fitness and in overseeing probationary license holders. These Guidelines do not limit the authority of the Board or a panel of three or more Board members to make a finding or decision based on the specific facts relating to an Applicant's or Probationary Licensee's present character or fitness.

III. GOOD MORAL CHARACTER

An Applicant's good moral character is evaluated through a functional assessment of the character of a prospective lawyer. This requirement is intended to exclude from the practice of law those who possess character traits likely to result in injury to future clients, in the obstruction of justice, or in a violation of the Texas Disciplinary Rules of Professional Conduct. These character traits usually involve either dishonesty or lack of trustworthiness in carrying out responsibilities. There may be other character traits that are relevant in the admissions process, but such traits must have a rational connection with the Applicant's present fitness or capacity to practice law. Accordingly, these traits must relate to the legitimate interests of Texas in protecting clients and in safeguarding the system of justice in Texas. *See Rule 4(b), Rules Governing Admission to the Bar of Texas.*

IV. FITNESS

An Applicant's fitness is evaluated through an assessment of mental and emotional health as it affects the competence of a prospective lawyer. This requirement is intended to exclude from the practice of law persons having mental or emotional illnesses or conditions that

likely would prevent them from carrying out their duties to clients, courts, or the profession. Applicants may be of good moral character, but may be unfit to properly discharge their duties as lawyers by reason of such illness or condition. The fitness required is “present” fitness, and previous mental illness or emotional conditions are relevant only insofar as they indicate the existence of a present lack of fitness. *See* Rule 4(c), *Rules Governing Admission to the Bar of Texas*.

- A. The following non-exhaustive list of facts and circumstances may be considered as an indication of lack of present fitness:
 - 1. Evidence of recent aberrant conduct or behavior that calls into question the Applicant’s ability to practice law in a competent, ethical, and professional manner;
 - 2. Evidence of treatment, advice to seek treatment or any order directing the Applicant to seek mental health treatment, to address a history of misconduct or misbehavior;
 - 3. Evidence of an existing condition or impairment—including a substance use disorder or a mental, emotional, or nervous disorder or condition—that in any way affects the Applicant’s ability to perform any of the obligations and responsibilities of a practicing lawyer in a competent, reliable, ethical, and professional manner; and
 - 4. Applicant’s assertion of any substance use disorder, or any mental, emotional, or nervous disorder or condition, as a defense or explanation, in any forum, in response to any allegation of misconduct.
- B. Diagnosis or treatment for mental health conditions alone does not ordinarily constitute evidence of a lack of present fitness. The Board of Law Examiners regularly certifies Applicants for admission to the Bar who have demonstrated personal responsibility and maturity in dealing with mental health conditions or substance use disorders. Treatment or counseling is encouraged and will be considered evidence of responsible behavior and rehabilitation.

V. **CHEMICAL DEPENDENCY**

Chemical dependency means a substance use disorder as defined by the DSM-5, Diagnostic and Statistical Manual of Mental Disorders. Rule 1(a)(7), *Rules Governing Admission to the Bar of Texas*.

- A. A history of substance use disorder, if in uninterrupted remission for two years or more at the time of application, will not support a finding of chemical dependency.
- B. With or without a finding of current chemical dependency, any other facts or circumstances suggesting substance abuse or chemical dependency may be considered evidence of a lack of fitness.

- C. Treatment, counseling, and participation in abstinence-support groups such as Alcoholics Anonymous or Lawyers Concerned for Lawyers are encouraged and will be considered evidence of responsible behavior and rehabilitation.
- D. A finding of current substance use disorder or chemical dependency will result in issuance of a probationary license for two years as required by section 82.038(f) of the Texas Government Code and Rule 16(d)(1), *Rules Governing Admission to the Bar of Texas*.

VI. GENERAL FACTORS TO BE CONSIDERED IN DECISION ON CHARACTER AND FITNESS ISSUES

In making a determination whether to certify an Applicant's character and fitness for admission to the Bar, the Board panel should consider the following factors:

- A. The misconduct or duty of care violated;
- B. The Applicant's level of culpability;
- C. The potential or actual injury caused by the Applicant's misconduct or violation; and
- D. The existence of aggravating or mitigating factors.

VII. DISPOSITIONS BASED ON PARTICULAR FINDINGS

The Board may certify an Applicant's present good moral character and fitness, deny certification, or grant conditional approval, depending on an Applicant's acts or omissions and the existence of aggravating or mitigating factors. Multiple bad acts or omissions increase the likelihood of a decision adverse to the Applicant.

- A. Lack of Diligence—Examples include neglect or disregard of financial responsibilities; abandonment of employment, scholastic, or other professional duties; failure to timely file tax returns or pay taxes; neglect of obligations in another licensed profession or occupation; violation of any court order; failure to fully and truthfully respond to requests for information by the Applicant's law school, employers, or the Board of Law Examiners; and an uncured default on a loan guaranteed by the Texas Guaranteed Student Loan Corporation or other private or publicly funded student loans. In general, depending on aggravating and mitigating factors, a finding of lack of diligence may result in conditional admission or denial.
- B. Lack of Respect for the Law—Examples include commission or conviction of a crime and failure to appear in a court when required. In general, depending on aggravating and mitigating factors, a finding of lack of respect for the law may result in conditional admission or denial.
- C. Lack of Respect for Rights of Others—Examples include acts constituting sexual harassment, dangerous behavior, unlawful discrimination, or bullying. In general,

depending on aggravating and mitigating factors, a finding of lack of respect for rights of others may result in conditional admission or denial.

- D. Lack of Candor—Examples include failing to respond or omitting material information in any application or in response to requests for information by the Applicant’s law school, employers, the Board of Law Examiners, or any other governmental entity. In general, depending on aggravating and mitigating factors, a finding of lack of candor may result in conditional admission or denial.
- E. False Statements, Fraud, and Misrepresentation—Examples include knowingly or negligently making false statements to the Applicant’s law school, employers, fiduciaries, the Board of Law Examiners, or any other governmental entity or legal tribunal. In general, depending on aggravating and mitigating factors, a finding of false statements, fraud, and misrepresentation may result in conditional admission or denial.
- F. Abuse of the Legal Process—Examples include litigation of frivolous civil actions or imposition of sanctions by any court due to abusive litigation conduct. In general, depending on aggravating and mitigating factors, a finding of abuse of the legal process may result in conditional admission or denial.
- G. Failure to Maintain Personal Integrity—Examples include commission or conviction of a crime; termination or discipline for employee misconduct; violation of the honor code or other academic or behavioral misconduct as determined by the Applicant’s educational institution; engaging in the unauthorized practice of law or the existence of unresolved allegations of unauthorized practice of law by the Applicant; and engaging in conduct prohibited by the Texas Bar Examination Security Policy during the administration of the Texas Bar Examination. In general, depending on aggravating and mitigating factors, a finding of failure to maintain personal integrity may result in conditional admission or denial.
- H. Finding of Neglect or Violation of Other Professional Duties—Examples include denial of admission to the Bar in another jurisdiction based on a finding of misconduct or lack of good character or fitness; and disciplinary action by a lawyer disciplinary agency or professional disciplinary group of any jurisdiction, including pending, unresolved disciplinary complaints or grievances, regardless of finality. In general, depending on aggravating and mitigating factors, a finding of neglect or violation of other professional duties may result in conditional admission or denial.
- I. Lack of Compliance with Board Order—Failure to comply with the terms and conditions of any order by the Board of Law Examiners recommending conditional approval or conditional admission with terms of probation. In general, depending on aggravating and mitigating factors, a finding of a lack of compliance with a Board Order may result in continued conditional admission, with the same or modified terms, or denial.
- J. Other Evidence of Lack of Good Moral Character—Other character traits that are likely to result in injury to future clients, obstruction of justice, or a violation of the

Texas Disciplinary Rules of Professional Conduct as provided by Rule 4(b) of the *Rules Governing Admission to the Bar of Texas*, provided such character traits have a rational connection with the Applicant's present fitness or capacity to practice law and relate to the legitimate interests of Texas in protecting prospective clients and in safeguarding the system of justice within Texas. In general, depending on aggravating and mitigating factors, a finding that the Applicant possesses such other character traits may result in conditional admission or denial.

VIII. MITIGATING AND AGGRAVATING FACTORS

The following non-exhaustive list of factors may be considered in determining the present character and fitness of an Applicant based on his or her conduct:

- A. Age of the Applicant at the time of the conduct;
- B. How recently the conduct in question occurred;
- C. Reliability of the information evidencing the conduct;
- D. Seriousness of the conduct;
- E. Cumulative effect of multiple negative character and fitness factors and other information about the Applicant;
- F. Evidence of rehabilitation;
- G. Positive work performance and steady employment;
- H. Positive social contributions of the Applicant since the conduct;
- I. Candor and cooperation of the Applicant throughout the application process;
- J. Materiality of any omission or misrepresentations;
- K. Reliable evidence of opinions held by persons personally acquainted with the Applicant who have confirmed comprehensive knowledge of the negative factors at issue;
- L. Evidence of genuine remorse and recognition of personal responsibility for past misconduct;
- M. Sincerity, honesty, and respect as demonstrated at any interview, informal conference, or hearing before the Board or any Board staff member; and
- N. Degree of culpability of the Applicant for any actual injury caused by the misconduct.

IX. EVIDENCE OF REHABILITATION

Applicants who assert rehabilitation from previous conduct have the burden to show present good moral character and fitness for admission to the Bar through evidence of the following:

- A. The Applicant's strict compliance with any curative measures ordered by the Board, as well as any disciplinary, judicial, or administrative orders imposed by any relevant forum, educational institution, employer or agency;
- B. The Applicant's reputation for present good moral character based on recommendations from persons aware of all alleged misconduct at issue and who have specifically considered the Applicant's character and fitness with knowledge of that misconduct;
- C. The Applicant's lack of malice and ill-feeling toward any victim of the Applicant's misconduct or those responsible for taking disciplinary, judicial, or administrative action in response to the Applicant's misconduct, including, but not limited to, the staff of the Board of Law Examiners;
- D. The Applicant's restitution of funds or property lost, damaged, or stolen by the Applicant in connection with the misconduct, where applicable; and
- E. The Applicant's sustained and substantial positive conduct and behavior. Evidence of the lack of misconduct, although necessary to show rehabilitation, does not necessarily prove rehabilitation nor does it necessarily prove that the Applicant has the requisite present good moral character and fitness to be admitted to the Bar.

X. PROBATIONARY LICENSES

The Board may recommend probationary licensing with conditions designed to protect the public from potential harm that the probationary licensee might cause.

- A. Redetermination of present good moral character and fitness may be made with or without a hearing. The Board may specify as a term of the probationary license that a hearing must be conducted to make the redetermination.
- B. If a hearing on redetermination of present good moral character and fitness is not required as a term of the probationary license, Board staff may recommend conversion to a regular license without a hearing.
- C. If Board staff determines that a probationary licensee has failed to comply with any material term of a probationary license order, the staff will issue notice of non-compliance and provide the probationary licensee an opportunity for hearing.
- D. The following non-exhaustive list of facts or circumstances may be considered as evidence of non-compliance with a probationary license order:

1. Repeated failure to comply with a requirement for periodic drug or alcohol testing;
 2. Failure to cooperate with Board staff in efforts to monitor the probationary licensee;
 3. Repeated failure to cooperate or meet with an assigned attorney monitor, if required;
 4. Failure to remain abstinent from the use of alcohol or controlled substances, if required;
 5. Failure to maintain residency in Texas, if required;
 6. Failure to comply with any periodic reporting requirement;
 7. Failure to comply with a requirement to complete or continue treatment for chemical dependency or mental health issues;
 8. Violation of any state or federal law or attorney disciplinary rule;
 9. Attorney disciplinary action by any state or federal court or any licensing authority of this or any other state;
 10. Failure to comply with requirements of any criminal probation;
 11. Negative reports from any employer, mentor, or attorney monitor;
 12. Failure to complete any additional requirements of the probationary license, including continuing education requirements and pro bono service; or
 13. Unreasonable or unjustified failure to comply with treatment recommendations of any treating mental health or substance abuse treatment provider.
- E. At the discretion of the Board, based upon a finding of material non-compliance, a probationary license may be terminated or extended with or without additional terms and conditions, or a request for redetermination and certification for a regular license may be denied.