



## **APPLICATION LEGAL & DISCIPLINARY QUESTIONS**

**UPDATED 1/14/2019**

The required legal & disciplinary questions on a terminal distributor, repackager, manufacturer, outsourcing facility, third-party logistics provider or wholesale distributor of dangerous drugs application provides the opportunity for the Board to review the facts and circumstances related to a particular case to determine its potential connection, if any, to the issuance of a license. The purpose of such questions is to act as a safeguard against the diversion of dangerous drugs and protection of confidential patient information by requiring disclosure of information necessary to protect the health and safety of the public.

The following guidance provides information about the application legal and disciplinary questions. A full list of the questions is included at the end of this guidance document.

**Q1:** Who is covered by the applicant legal & disciplinary questions? Does this apply to all employees, agents, or contractors of an entity, even those that do not work on-site?

**A1:** The questions include the following:

- The business entity
- Owner
- Operator
- Corporate officers, including: president, vice president, secretary, treasurer, CEO, CFO, or any equivalent position
- Partner(s)
- Sole proprietor
- Employees responsible for the provision of patient care at the facility (this includes contract prescribers and other healthcare professionals)
- Any other person with access to drug stock\*

**\*NOTE:** Access to drug stock includes not only physical access, but also any influence over the handling of prescription drugs (i.e. dangerous drugs) such as purchases, inventories, issuance of medical orders, etc. It does not include employees/contractors such as maintenance, janitorial, IT or other staff that may need limited supervised access to areas where prescription drugs or D.E.A. controlled substance order forms are kept. However, the licensee or applicant must have policies in place that prohibit unsupervised access to such areas by these employees.

These questions **do not** apply to:



- Former employees or agents of the licensee at the time the legal & disciplinary questions are answered.
- The applicant's responsible person. The responsible person has their own set of legal & disciplinary questions on the application.

**NOTE: The ten-year lookback period for a misdemeanor theft offense is from the date the application is signed by the applicant.**

**Q2:** How is it possible for an applicant to acknowledge that they have correctly answered the legal and disciplinary questions at the time of initial licensure or renewal – how will the applicant know the criminal history of those listed in A1 and the responsible person?

**A2:** The entity seeking licensure should exercise due diligence in ensuring they know the answers to these questions for the persons described in A1 and the responsible person. This also means having screening policies for owners, officers, employees or contractors who meet the criteria listed in A1 and for the responsible person.

For legal or disciplinary questions on the renewal application, the Board does not advise an entity on how to obtain their information nor instruct an entity as to what their policy must include. However, as a general rule, a policy with a mandatory reporting clause has been found to be acceptable by the Board. Such a policy should be implemented in accordance with all federal and state laws. There must be mechanism in place for results of that mandatory reporting to be relayed to the RP/owner/applicant on the license so that the legal/disciplinary questions can be answered honestly and accurately.

As long as the entity/RP is aware that such a mechanism is in place requiring such reporting and that the necessary personnel (i.e. RP) would be aware of it when completing and signing the application, the entity/RP may check answer the questions accordingly.

**NOTE REGARDING THE FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC):**

The EEOC does not have the authority to prohibit employers from obtaining or using arrest or conviction records. The EEOC simply seeks to ensure that such information is not used in a discriminatory way.

In implementing policies related to obtaining appropriate employment information in the Terminal Distributor of Dangerous Drugs setting, be mindful that the policy should be applied equally to all applicants. The EEOC publishes the following guidance:

*In all cases, make sure that you're treating everyone equally. It's illegal to check the background of applicants and employees when that decision is based on a person's race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older). For example, asking only people of a certain race about their financial histories or criminal records is evidence of discrimination.*

The EEOC enforces Title VII, which prohibits employment discrimination based on race, color, religion, sex, or national origin. Having a criminal record is not listed as a protected basis in Title VII. Therefore, whether a covered employer's reliance on a criminal record to deny employment violates Title VII depends on whether it is part of a claim of employment discrimination based on race, color, religion, sex, or national origin. Title VII liability for employment discrimination is determined using two analytic frameworks: "disparate treatment" and "disparate impact."

Title VII also does not preempt federal statutes and regulations that govern eligibility for occupational licenses and registrations. These restrictions cover diverse sectors of the economy including the transportation industry, the financial industry, and import/export activities, among others.

**Q3:** If a person described in A1 (or the responsible person) has been charged/convicted/disciplined prior to initial licensure, must the entity terminate that individual's employment in order to obtain a license?

**A3:** The Board does not advise an entity on whether to terminate an individual with a criminal case/conviction or disciplinary action; that decision rests with the entity's personnel policies. However, the entity **MUST** report the underlying charge/conviction/discipline to the Board (as stated in the application) so that the Board may review the facts and circumstances related to a particular case to determine its potential connection, if any, to the license for which the entity is applying.

**FOR A PAIN MANAGEMENT CLINIC:** Section 4729.552 of the Revised Code requires all employees of the facility to submit to a criminal records check in accordance with section 4776.02 of the Revised Code and ensure that no person is employed who has previously been convicted of, or pleaded guilty to, either of the following: (1) A theft offense, described in division (K)(3) of section 2913.01 of the Revised Code, that would constitute a felony under the laws of this state, any other state, or the United States; or (2) A felony drug abuse offense, as defined in section 2925.01 of the Revised Code.

**FOR AN OFFICE-BASED OPIOID TREATMENT (OBOT) FACILITY:** Section 4729.553 requires all employees of the facility to submit to a criminal records check to ensure that a person is not employed by the facility if the person, **within the ten years immediately preceding the date the person applied for employment**, was convicted of, or pleaded guilty to, either of the following: (1) A theft offense, described in division (K)(3) of section 2913.01 of the Revised Code, that would constitute a felony under the laws of this state, any other state, or the United States; or (2) a felony drug offense, as defined in section 2925.01 of the Revised Code. **NOTE:** An OBOT licensee or applicant may apply for a waiver for an employee who has previously been convicted of or pleaded guilty to any felony theft or drug offense within the ten years immediately preceding the date the person applied for employment. The waiver form is available on the [terminal distributor licensing](#) page under the FORMS header.

**Q4:** How can the Board expect an employer to require an employee, agent, etc. to disclose an expunged or sealed felony or misdemeanor drug offense?

**A4:** Section 2953.33(B) of the Ohio Revised Code permits inquiry into sealed convictions if the question bears a direct and substantial relationship to the position for which the person is being considered. This code section applies to applications for employment, license, or other right or privilege.

**Q5:** What does the Board consider a misdemeanor related to, or committed in, the person's professional practice (i.e. medical, dental, nursing, pharmacy, etc.)?

**Q5:** The Board considers a misdemeanor related to, or committed in, a person's professional practice to be a misdemeanor for which an Ohio licensing agency may take or has taken action against a licensee under its regulatory authority. A misdemeanor offense seemingly only related to administrative tasks has been found to be within the course of the person's professional practice.

*If you are not sure whether the Board would consider a particular offense to be a misdemeanor related to, or committed in, a person's professional practice, it is recommended that the responsible person disclose the information to the Board on the application materials so that the Board may review the facts and circumstances to determine whether a direct and substantial relationship exists.*

**Q6:** What does the Board consider a misdemeanor related to, or committed in, the distribution of dangerous drugs?

**Q6:** The Board considers a misdemeanor related to, or committed in, the distribution of dangerous drugs (i.e. prescription drugs) to be a misdemeanor for which an Ohio/federal licensing agency or law enforcement agency may take action may take or has taken action against an individual pursuant to state or federal law.

*If you are not sure whether the Board would consider a particular offense to be a misdemeanor related to, or committed in, the distribution of dangerous drugs, it is recommended that the responsible person disclose the information to the Board on the application materials so that the Board may review the facts and circumstances to determine whether a direct and substantial relationship exists.*

**Q7:** What constitutes a crime of moral turpitude as defined in section 4776.10 of the Ohio Revised Code?

**A7:** A crime of moral turpitude as defined in section 4776.10 of the Ohio Revised Code, includes the following:

- **Sexually oriented offenses:** Rape, Sexual Battery, Gross Sexual Imposition, Sexual Imposition, Importuning, Voyeurism, Compelling Prostitution, Promoting Prostitution, Pandering Obscenity, Pandering Obscenity or Sexually Oriented Matter Involving a Minor, and Illegal Use of a Minor in Nudity Oriented Material.
- **The following offenses of violence that are first or second degree felonies:** Aggravated Murder, Murder, Voluntary Manslaughter, Involuntary Manslaughter, Felonious Assault, Aggravated Assault, Assault, Permitting Child Abuse, Aggravated Menacing, Menacing, Menacing by Stalking, Kidnapping, Abduction, Extortion, Trafficking in persons, Rape, Sexual Battery, Gross Sexual Imposition, Aggravated Arson, Arson, Terrorism, Aggravated Robbery, Robbery, Aggravated Burglary, Inciting to Violence, Aggravated Riot, Riot, Inducing Panic, Domestic Violence, Intimidation (including of witness or attorney), Escape, Improper Discharge of Firearm, Patient abuse, Burglary (specific sections), Endangering Children (specific sections) and Felonious Sexual Penetration.

**Note:** Please consult legal counsel for a complete listing of crimes of moral turpitude as defined in section 4776.10 of the Revised Code.

**Q8:** What does the Board consider a crime (felony or misdemeanor) involving an act of moral turpitude?

**A8:** A crime involving an act of moral turpitude is a criminal act (felony or misdemeanor) that includes an act or behavior that gravely violates moral sentiment or accepted moral standards of the community and is of a morally culpable quality held to be present in some criminal offenses as distinguished from others.

*If you are not sure whether the Board would consider a particular offense to be an act of moral turpitude it is recommended that the responsible person disclose the information to the Board on the application materials so that the Board may review the facts and circumstances to determine whether a direct and substantial relationship exists.*

**Q9:** What theft offenses are included in division (K)(3) of section 2913.01 of the Revised Code?

**Q9:** The following theft offenses are included in division (K)(3) of section 2913.01 of the Revised Code:

- |                                 |   |
|---------------------------------|---|
| ▪ 2911.01 Aggravated Robbery    | ▪ 2911.32 Tampering with coin machines  |
| ▪ 2911.02 Robbery               | ▪ 2913.02 Theft                         |
| ▪ 2911.11 Aggravated Burglary   | ▪ 2913.03 Unauthorized use of a vehicle |
| ▪ 2911.12 Burglary              |   |
| ▪ 2911.13 Breaking and Entering |   |
| ▪ 2911.31 Safecracking          |   |

- 2913.04 Unauthorized use of property – computer, cable, or telecommunication property
- 2913.041 Possession or sale of unauthorized cable television device
- 2913.05 Telecommunications fraud
- 2913.06 Unlawful use of telecommunications device
- 2913.11 Passing bad checks
- 2913.21 Misuse of credit cards
- 2913.31 Forgery – forging identification cards or selling or distributing forged identification cards
- 2913.32 Criminal simulation
- 2913.33 Making or using slugs
- 2913.34 Trademark counterfeiting
- 2913.40 Medicaid Fraud
- 2913.42 Tampering with records
- 2913.43 Securing writings by deception
- 2913.44 Personating an officer
- 2913.45 Defrauding creditors
- 2913.47 Insurance fraud
- 2913.48 Workers’ compensation fraud
- Former sections:
  - 2913.47
  - 2913.48
- 2913.51 Receiving stolen property
- 2915.05 Cheating – corrupting sports
- 2921.41 Theft in Office

**Q10:** What does the Board consider to be a disciplinary action by the Drug Enforcement Administration or licensing agency of any state or jurisdiction?

**A10:** The Board considers a disciplinary action to include any of the following regardless of whether the action occurred by formal proceeding, consent, settlement, or other agreement:

1. An action to revoke, suspend, restrict, limit, or refuse to grant or renew a license, registration, or certification;
2. A summary or emergency suspension of a license, registration or certification, of any length, and any subsequent revision to the action;
3. An administrative fine or money penalty, taken as a result of a formal proceeding, to include any fine or money penalty connected to the delivery of health care services or taken in conjunction with other adverse licensure, registration or certification actions, such as revocation, suspension, censure, reprimand, or probation;
4. An action to reprimand or place the license, registration, or certification holder on probation;
5. The issuance of a corrective action plan only if such issuance is in conjunction with other adverse licensure, registration or certification actions, such as revocation, suspension, reprimand, probation, or surrender;

6. The withdrawal of a renewal application for licensure, registration or certification while under investigation;
7. The non-renewal of a license, registration or certification while under investigation or to avoid an investigation;
8. The surrender of a license, registration or certification in lieu of a formal sanction against a person's license, registration, or certificate;
9. In lieu of an adverse licensure, registration or certification action, a licensing agency issues a consent order in which a person agrees not to re-apply for a license, registration, or certification in the future;
10. An enforceable agreement not to practice or to be placed into inactive or other equivalent status while under investigation or in exchange for not conducting an investigation.

## **List of Legal and Disciplinary Questions**

### **Applicant:**

1. Has the APPLICANT ever been convicted of, or are there charges pending for, a felony or misdemeanor drug offense under state or federal law? This includes a court granting intervention in lieu of treatment (also known as treatment in lieu of conviction, ILC or TLC), or other diversion programs. Felony or misdemeanor drug offenses must be included regardless of whether the case has been expunged or sealed or the equivalent thereof. Note: Minor misdemeanor drug convictions are not required to be reported. ORC 2925.11(D).
2. Has the APPLICANT ever been convicted of, or are there charges pending for, any other felony under state or federal law?
3. Within the past 10 years, has the APPLICANT ever been convicted of, or are there charges pending for, a misdemeanor theft offense as described in division (K)(3) of section 2913.01 of the Ohio Revised Code.
4. Has the APPLICANT ever been excluded or directed to be excluded from participation in a Medicare or state health care program, or is any such action pending?
5. Has the APPLICANT ever been denied a license by the Drug Enforcement Administration or appropriate issuing body of any state or jurisdiction, or is any such action pending?
6. Has the APPLICANT ever been the subject of an investigation or disciplinary action by the Drug Enforcement Administration or appropriate issuing body of any state or jurisdiction that resulted in the surrender, suspension, revocation, or probation of the applicant's license or registration?
7. Has the APPLICANT ever been the subject of a disciplinary action by the Drug Enforcement Administration or appropriate issuing body of any state or jurisdiction that was based in whole or in part, on the applicant's prescribing, dispensing, diverting, administering, storing, personally furnishing, compounding, supplying or selling a controlled substance or other dangerous drug (i.e. prescription drug), or is any such action pending?

### **Responsible Person:**

1. Has the RESPONSIBLE PERSON been charged with and/or convicted of two or more traffic offenses within 3 years involving alcohol, regardless of whether the original charge – such as Driving Under the Influence (DUI), Driving While Intoxicated (DWI), Operating a Vehicle while Impaired (OVI), Operating a Motor Vehicle while under the Influence (OMVI) or the equivalent in another jurisdiction – was ultimately reduced or plead to a different offense other than the original charge?
2. Has the RESPONSIBLE PERSON ever been convicted of, or are there charges pending for, a felony or misdemeanor drug offense under state or federal law? This

includes a court granting intervention in lieu of treatment (also known as treatment in lieu of conviction, ILC or TLC), or other diversion programs. Felony or misdemeanor drug offenses must be included regardless of whether the case has been expunged or sealed or the equivalent thereof. Note: Minor misdemeanor drug convictions are not required to be reported. ORC 2925.11(D).

3. Has the RESPONSIBLE PERSON ever been convicted of, or are there charges pending for, any other felony under state or federal law?
4. Within the past 10 years, has the RESPONSIBLE PERSON ever been convicted of, or are there charges pending for, a misdemeanor theft offense as described in division (K)(3) of section 2913.01 of the Ohio Revised Code.
5. Has the RESPONSIBLE PERSON ever been convicted of, or are there charges pending for, a misdemeanor related to, or committed in, the person's professional practice (i.e. medicine, pharmacy, nursing, etc.)?
6. Has the RESPONSIBLE PERSON ever been convicted of, or are there charges pending for, a crime of moral turpitude as defined in section 4776.10 of the Ohio Revised Code?
7. Has the RESPONSIBLE PERSON ever been convicted of, or are there charges pending for, a crime (felony or misdemeanor) involving an act of moral turpitude?
8. Has the RESPONSIBLE PERSON ever been excluded or directed to be excluded from participation in a Medicare or state health care program, or is any such action pending?
9. Has the RESPONSIBLE PERSON ever been denied a license by the Drug Enforcement Administration or appropriate issuing body of any state or jurisdiction, or is any such action pending?
10. Has the RESPONSIBLE PERSON ever been the subject of an investigation or disciplinary action by the Drug Enforcement Administration or appropriate issuing body of any state or jurisdiction that resulted in the surrender, suspension, revocation, or probation of the responsible person's license or registration?
11. Has the RESPONSIBLE PERSON ever been the subject of a disciplinary action by the Drug Enforcement Administration or appropriate issuing body of any state or jurisdiction that was based in whole or in part, on the responsible person's prescribing, dispensing, diverting, administering, storing, personally furnishing, compounding, supplying or selling a controlled substance or other dangerous drug (i.e. prescription drug), or is any such action pending?