

Office of Professional Regulation

Policy and Procedure:

S.233 Second Chance Determination

I. Purpose.

Vermont law allows a prospective applicant for a professional license administered by the Office of Professional Regulation (OPR) to request a pre-application assessment as to whether past criminal conduct would present a barrier to obtaining an OPR-administered license. See 3 V.S.A. § 123(k). Such an assessment is known as a “second chance determination.”

II. Policy.

The purpose of professional and occupational licensing is to protect the public. A professional license may be denied or restricted for “[c]onviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession.” 3 V.S.A. § 129a(a)(10). State policy favors rehabilitation and reintegration of persons whose past criminal conduct does not bear on their present fitness to practice the regulated professions. It is therefore OPR policy to offer favorable second chance determinations to the extent possible without limiting licensing authorities’ ability to protect the public.

II. Applicability.

Second chance determinations serve to clarify the license eligibility of a natural person, who fully and candidly discloses actual criminal convictions, and who has a bona fide interest in knowing his or her eligibility for an identified professional license administered by OPR pursuant to 3 V.S.A. § 122.

Second chance determinations are not available for:

- (a.) Business and institutional licenses;
- (b.) hypothetical or counterfactual questions; or
- (c.) requestors who would be ineligible for licensure regardless of criminal history.

III. Effect

An OPR second chance determination articulates the maximum licensing sanction the State will seek if the recipient, having engaged in no intervening bad conduct, subsequently applies for a professional license. A second chance determination binds the State only in relation to the specific professional license type or types for which the determination was sought, and only in respect to convictions accurately disclosed. Pursuant to 3 V.S.A. § 123(i), the Director of Professional Regulation shall monitor board activities to ensure that second chance determinations are honored as written.

IV. Procedure

- (a.) An application for second chance determination must be made online at the OPR website, using an electronic form prepared for that purpose.

(b.) The second chance determination request fee must be paid with the request submission, however, if the applicant later applies for licensure, the pre-application fee shall be deducted from the license application fee as a one-time deduction of the application fee for the full license.

(c.) Applications must include a full disclosure of criminal conviction history, to include without limitation:

1. The charging instrument (indictment, police report, affidavit of probable cause);
2. The sentencing instrument (court order, final adjudication including sentence);
3. Conditions of probation or parole, or evidence of successful completion;
4. If under penal supervision, a statement of support from the supervising official;
5. Evidence of rehabilitation;
6. A narrative explanation by the applicant; and
7. Such additional documentation as OPR may reasonably request to understand the nature and context of the disclosed conduct and its relation to the profession in question.

(d.) Incomplete applications will not be processed. An application is incomplete if an unresolved deficiency has been identified by OPR in writing through the Online Services System. After six months of inactivity, an incomplete application may be closed.

V. Form of Determination

Within 30 days of receiving a completed request for a second chance determination, OPR will provide a concise written assessment of the nature of the underlying conviction or convictions, the nexus to the credential of interest, and the evidence of rehabilitation offered.

Such an assessment will conclude that the convictions disclosed: (a.) would not affect license eligibility;

(b.) would provoke the State to seek a warning or reprimand, but not to seek restrictions upon the license;

(c.) would provoke the State to seek a warning or reprimand as well as conditions and limitations on the license, such as peer supervision; or

(d.) would provoke the State to oppose issuance of the license.

VI. Finality

A person who has received a second chance determination is ineligible for reassessment unless the Director finds that there has been a compelling change in circumstances warranting reassessment.

A person displeased with a second chance determination may not appeal but may instead apply for a license and contest eligibility through the appeal and hearing process established by 3 V.S.A. § 129(e).