

Can I Put My Hat On? I'm a Good Moral Character.....Now



**Assessing Suitability for
Entry to Practice**



NCSBN

National Council of State Boards of Nursing



Overview

- Definition: what is Good Moral Character?
- Purpose: why do regulators assess Good Moral Character and should they?
- General principles
- Common risk factors
- Case studies
- Practical tips

Definition

- The requirement to be of Good Moral Character is frequently found in statutes, regulations, bylaws and/or policies
- Variations in standards:

Good moral character

Good character

Good character and reputation

Fitness to practice

Suitability

FIT AND PROPER TO BE ADMITTED

Definition (cont'd)

- “An applicant must satisfy the council that he or she is “of good standing and good repute” (Engineers and Geoscientists, B.C.)
- “Applicant’s past and present conduct must afford reasonable grounds for the belief that the applicant will practise pharmacy with decency, honesty and integrity, and in accordance with the law” (Pharmacists, Ontario)

Good Moral Character

- Board of Registration in Nursing, Massachusetts:
Attributes of Good Character:
 - a. honesty;
 - b. trustworthiness;
 - c. integrity;
 - d. accountability;
 - e. reliability;
 - f. distinguishing between right and wrong;
 - g. avoidance of aggression to self and others;
 - h. taking responsibility for one's own actions and similar attributes found relevant by the Board

Good Moral Character (cont'd)

- Good Moral Character is understood as:

“Those aspects of morality, attention to duty, forthrightness and self-restraint that are usually associated with the accepted definition of good moral character. Any conduct...which calls into question [one's] fitness or ability to practise medicine, or which is antithetical to the promotion of the public health, safety and welfare...., constitutes a lack of good moral character”.

Massachusetts Board of Registration in Medicine (US)

Good Moral Character (cont'd)

- Good character connotes moral strength and includes integrity, candour, empathy and honesty
- Good character embodies qualities that are relevant to the particular practice

Lum v Alberta Dental Association and College, 2016 ABCA 154

Is a Good Reputation Different than being a Good Moral Character?

- “Good character” and “good reputation” are not necessarily the same standard
- Question to ask to assess reputation: would a right-thinking member of the community consider the applicant to be of good repute?

Mary Southin, Q.C., “What is Good Character?” 35 The Advocate 129

Are you Good unless Proven to be Bad?

- Is it mere absence of bad character or is it more than that?



No Proof of Absence to the Contrary

- Generally:
 - The term “good moral character” has traditionally been defined as an absence of proven conduct or acts which have been historically considered as manifestations of moral turpitude

Pacheco v State Bar, 43 Cal 3d 1041

Unless there is a Checkered Past

- But if applicant has a checkered past:
 - “The good moral character required for admission to the Bar “is something more than an absence of bad character”; it requires that the applicant has acted as a person “of upright character ordinarily would, should, or does.”

Re Lazcano, 222 P. 3d 896 (Ariz. 2010)

Cited by the High Court of South Africa in *Mtshabe v Law Society of the Cape of Good Hope*, [2014] ZAECHMC 17

Purpose

Why do/should regulators assess
Good Moral Character?

- Public protection
- Maintain High Ethical Standards
- Maintain the reputation of the profession



Nurses Keep Healthy Lead as Most Honest, Ethical Profession

December 26, 2017

WASHINGTON, D.C. -- For the 16th consecutive year, Americans' ratings of the honesty and ethical standards of 22 occupations finds nurses at the top of the list. More than eight in 10 (82%) Americans describe nurses' ethics as "very high" or "high." In contrast, about six in 10 Americans rate members of Congress (60%) and lobbyists (58%) as "very low" or "low" when it comes to honesty and ethical standards.

General Principles

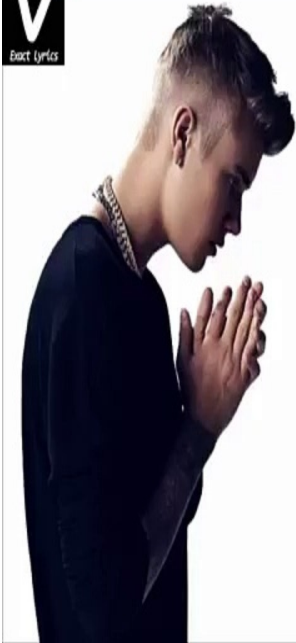
- Past conduct is not an automatic bar to admission
- A person's character is dynamic and not static
- It's a question of now
 - The applicant must establish that as of **today**, s/he is of Good Moral Character
 - Onus is on the applicant

General Principles (cont'd)

- For applicants with a history of poor conduct, the following factors are considered in good character assessment:
 - Timing of the conduct (i.e. when did the applicant commit the offence or misconduct in question)
 - Nature and duration of the conduct
 - Whether the applicant is remorseful (eg. disclosure)
 - Evidence of rehabilitation
 - Applicant's conduct since the proven misconduct
 - Relevance of the conduct to the profession

Pendergrast v Law Society of Upper Canada, 2007 ONLSHP 22

Lum v Alberta Dental Association and College, 2016 ABCA 154



You gotta go and get angry
at all of my honesty
You know I try but I don't do
too well with apologies
I hope I don't run out of time,
could someone call a referee?
Cause I just need one more
shot at forgiveness

**I know you know that I made
those mistakes maybe
once or twice
By once or twice I
mean maybe a couple of
hundred times**



Barred by Past Conduct?

In Massachusetts, applicants are permanently barred from admission as a Nurse where there are criminal convictions for:

- 1) Violent crime against any person(s) that involves extreme disregard of human life;
- 2) trafficking in, or illegally manufacturing, any controlled substance; and
- 3) exploitation or criminal mistreatment of a vulnerable individual including, a minor, elder and/or disabled person.

Temporary Time Out

- Convicted of an offence that does not result in a permanent bar
- Providing false information on application for licensure or examination
- Cheating on the National Council Licensure Examination (NCLEX), or on any other licensure or certification examination.

Board of Registration in Nursing - Massachusetts

Prospective Evaluation of Character

- For health professionals in the UK, consider 4 key elements to assess good character
- Whether there is reason to believe the applicant is liable, in future, to act:
 - in such a way that puts at risk the health, safety or well-being of a patient or other member of the public;
 - in such a way that his/her registration would undermine public confidence in the profession;
 - in such a way that indicates an unwillingness to act in accordance with the standards of the profession; and
 - in a dishonest manner

Council for Health Regulatory Excellence, UK (now the Professional Standards Authority)

Common Risk Factors

- Criminal history
- Bankruptcy / insolvency
- Litigious history
- Disregard/disdain for regulation
 - Repeated regulatory discipline or violation of municipal bylaws and traffic regulations
- Mental health issues
- Turbulent employment history (eg. real estate agent hopping from brokerage to brokerage every couple of years)
- Academic misconduct

Case study #1



- Applicant seeks licence as a real estate agent
- He was convicted of sexual offence for having relations with a grade 12 student when he was a high school teacher
- Relationship was consensual
- Provided expert evidence that he was of good character now

As Regulator, do you...

- (a) Grant the License
- (b) Deny the application

The Outcome

- Outcome: Licence granted with restrictions: supervision, limited clients, no further criminal charges etc.
- Licence was denied by the Qualification Hearing Committee but on appeal, the Financial Services Tribunal reversed the decision and granted licence with restrictions

Bancroft v. Real Estate Council of British Columbia, 2008
CarswellBC 2930

Case study #2

- The Applicant was applying for enrollment in the Law Society.
- He was subject to a good character hearing because of three separate sets of criminal charges, none of which resulted in a conviction.

The Beginning of a Very Bad Day...

- Approximately 10 years before his application to the Law Society, the Applicant's on again/off again girlfriend attended his home when he was not present and believed she discovered that he was seeing someone else.
- In a fit of jealousy, she threw his computer and his phone out the closed window.



The “Helpful” Neighbours

- The neighbours, understandably, feared a break in and called the police.



- When the police responded, they found a grow operation in the basement of the house.



The Criminal Charges

- The police did not lay charges in relation to the Marijuana Grow Operation, however....
- A few days later, in connection with this incident, the Applicant was charged with sexually assaulting, threatening and confining his on again/off again girlfriend.
- The Applicant was alleged to have confined and sexually assaulted the her in retaliation for the police discovery of the grow operation.
- At trial, however, the complainant recanted the allegation and stated that she lied to the police to get revenge on the Applicant.

Another Grow Operation

- Four years later (six years before his application to the Law Society) the police again discovered a marijuana grow operation in the Applicant's basement.
- Again the police did not charge.

**LUCKY
TWICE***

Other Evidence of Character

- During law school, the Applicant was given an “Award Certificate” for his volunteer work with the Salvation Army as well as for his work the “Law Students’ Legal Advice Program.
- The Applicant had several character witnesses, although they were not all fully informed regarding the Applicant’s past conduct in relation to the police.

Polling Question

- As the Regulator, do you:

(a) Admit the Applicant.

(b) Deny the Application.

Application Denied

In order to make a decision on the application for call and admission, must the Panel resolve the question of whether or not the sexual assault took place? There is evidence going to both sides of this issue. While it would be helpful to come to a conclusion, we find it unnecessary to answer that question. However, we are not prepared to decide that it did not occur.

We do conclude that, after considering all of the evidence relating to the [sexual assault charges] and his overall relationship with Ms. M, the Applicant's testimony regarding the 2000 Charges is not credible.

It is important not to confuse the good character requirement for admission with notions about forgiveness or about giving an applicant a second chance. The admissions panel is not in the forgiveness business; the test to be applied is clear, and the admissions panel is to determine if the applicant is of good character today. The Law Society Act does not permit an admissions panel to apply any test other than that relating to the applicant's good character at the time of the hearing. It's good character today, and sympathy and forgiveness doesn't enter into the equation.

For the actual case see: *Law Society of British Columbia v. Applicant 3*, [2010] L.S.D.D. No. 124

Case study #3

- The Applicant applied to the Board of Cosmetology and Barber Examiners.
- Six years before her application, the Applicant pleaded guilty to trafficking and was sentenced to a lengthy prison term.
- Two years prior to her application, while on parole, the Applicant pleaded guilty to forgery and stealing a motor vehicle.
- The Applicant was paroled again one year prior to her application and remained on parole when she made her application.

Polling Question

- As the Regulator, do you:

(a) Admit the Applicant.

(b) Deny the Application.

Application Denied

[The Applicant] pled guilty to several felonies, including drug trafficking, stealing a motor vehicle, and forgery. The Board may deny a license to an applicant who has committed crimes of moral turpitude. Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”

The Board stated, however, that:

The passage of time between the bad conduct and the license application is one, but not the only, factor considered. Along with the passage of time, [other] licensees presented admissible evidence of progress at work or in school and often changes in lifestyle.

If [the Applicant] continues to lead a law abiding life, accepts responsibility for her actions, and is honest about her past, we believe that she may qualify for a license at some point in the future.

For the actual case see: Watson v. Missouri Board of Cosmetology and Barber Examiners, No. 11-0183 CB

Should Ex-Cons be able to be licensed?



Is it necessary for the profession?

- Recently, calls have been made to evaluate whether a criminal record should act as a complete bar.
- A recent study by the Center for Economic Liberty at Arizona State University found that recidivism rates for inmates were four times higher than states with low occupational licensing requirements.
- In Louisiana, on average half of inmates return to prison within 5 years, however, only 1 in 10 return who receive vocational training.



White House Report - 2015

- The White House recommended adopting standards that require licensing boards to clarify how policies that bar ex-cons from getting a particular license are relevant to that profession.



Case study #4

- Applicant applies for licence as a pharmacist in 2011 in Missouri.



Previous History

Previously licensed as a pharmacist in 3 states but has been subject to discipline or denial in all 3 states.

1985 in California: dispensed aspirin with codeine w/o Rx; also dispensed “dangerous drugs” 91 times w/o Rx and billed insurance companies for them → licence revoked

1995 in Nevada: licence revoked, based on the California revocation

More Previous History

- **2006 in Kansas:** applied for licence but denied; worked as a Rx technician from 2004-2010. Reapplied for licence and was granted
- **2011 in Missouri:** applied for licence, answered “no” to question on previous discipline history
- Grant licence?
 - (a) Yes
 - (b) No

The Outcome

The Board found that applicant lacked good moral character but nonetheless issued a licence subject to a 5- year probation

Applicant appealed the denial of an unrestricted licence
On appeal, the Administrative Hearing Commission also granted a probated licence (1 year) but on different grounds:

- held that as a matter of law, “lack of good moral character is not a ground for issuance of a probated licence”

Outcome (cont'd)

Conclusive remarks of the Commission:

Pharmacists occupy positions owing great responsibility to the public, including customers, care providers and insurance companies

In light of his recent misrepresentation and the seriousness of the California incident, although remote in time, a one-year period of probation s appropriate

Forrester v. Missouri Board of Pharmacy, 2013 WL 6405716

What about capacity?

- Mental health issues, including:
 - personality disorders, manic depression, bipolar disorder, narcissistic behaviour, psychopathic, sociopathic
- Risk Management: admitting an applicant with impaired capacity can pose a significant risk.

Practical Tips

- Define good character and set the standard
- Nexus between the definition and the profession
- Character is static, not fixed – how will you evaluate a checkered past?
- Also remember the principles of natural justice and procedural fairness
 - Dealing with unrepresented applicants
 - Onus on the applicant
 - Leading the evidence
- Procedural challenges

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