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Guidelines to Determine the Fitness of a Person Who Has Been Convicted of a Crime

Pursuant to Chapter 53 and Chapter 1301, Section 1301.4521 of the Occupations Code and Section 363.2 of the rules of the Texas State Board of Plumbing Examiners (Board), these guidelines are issued by the Board to be used, in conjunction with Chapter 53 and Chapter 1301, Section 1301.4521 of the Occupations Code and Board Rule Section 363.2, by the Board's Enforcement Committee to determine the fitness of a person who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections.

(a) Licensed individuals are usually required to perform plumbing or plumbing inspections without direct supervision of any other person and must be trusted to carry out their duties and responsibilities without risking the health, safety, welfare and property of the public. Plumber's Apprentices are usually required to be supervised by a licensed plumber. However, it is estimated that the majority of Plumber's Apprentices are working towards licensure, therefore, the same factors must be considered for registrants. The duties and responsibilities of individuals performing plumbing or plumbing inspections include, but are not limited to:

(1) entering persons' homes and places of business to perform or inspect plumbing work including, but are not limited to:

- (A) private residences;
- (B) apartment complexes;
- (C) schools;
- (D) child care facilities;
- (E) elder care facilities;
- (F) medical care facilities;
- (G) financial institutions; and
- (H) businesses where valuable merchandise is stored and sold.

(2) making personal contact with persons who have requested plumbing work to be performed or inspected, including elderly persons and minor children of the persons who have made the request;

(3) engaging in contractual and financial transactions with persons who have requested plumbing work to be performed;

(4) being entrusted by employers to be responsible for the employers' vehicles and tools necessary to perform plumbing or plumbing inspections.

(5) ensuring safety when working with hazardous, explosive or volatile materials;

(6) complying with laws, rules, ordinances and codes that regulate plumbing; and

(7) working with officials who are carrying out their duties to enforce laws, rules, ordinances and codes that regulate plumbing including:

- (A) Field Representatives of the Board;
- (B) Plumbing Inspectors; and
- (C) other law enforcement officers.

(b) Due to the nature of the duties and responsibilities stated in paragraph (a)(1-7), the Board has determined that the holder of any registration or license issued by the Board would have an opportunity to commit certain crimes while performing plumbing or plumbing inspections. The Board has determined that the following crimes directly relate to the duties and responsibilities of all individuals registered or licensed by the Board (list is not all inclusive):

(1) Any crime of a sexual nature that requires the convicted person to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure, including:

- (A) Aggravated Sexual Assault (victim of any age)
- (B) Aggravated Rape (victim of any age)
- (C) Sexual Assault (victim of any age)
- (D) Rape (victim of any age)
- (E) Statutory Rape
- (F) Indecency With a Child (including exposure)
- (G) Prohibited Sexual Conduct
- (H) Sexual Performance by a Child
- (I) Possession or Promotion of Child Pornography
- (J) Aggravated Kidnapping (with the intent to commit an illegal act of a sexual nature)
- (K) Kidnapping (with the intent to commit an illegal act of a sexual nature)
- (L) Unlawful Restraint (with the intent to commit an illegal act of a sexual nature)
- (M) Burglary (with the intent to commit an illegal act of a sexual nature)
- (N) Indecent Exposure
- (O) Public Lewdness
- (P) Improper Photography or Visual Recording

(2) Any crime of a sexual nature listed in paragraph (b)(1)(A-P), regardless of whether or not the convicted person is required to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure;

- (3) Capital Murder
- (4) Murder;
- (5) Criminal Negligent Homicide
- (6) Manslaughter;
- (7) Aggravated Kidnapping
- (8) Kidnapping
- (9) Unlawful Restraint
- (10) Injury to a Child, Elderly Individual or Disabled Individual
- (11) Burglary of a Habitation;
- (12) Burglary of a Building;
- (13) Burglary of an Automobile;

- (14) Robbery;
- (15) Theft (felony);
- (16) Fraud (felony);
- (17) Forgery (felony);
- (18) Arson
- (19) Aggravated Assault of a Police Officer (or other public official);
- (20) Aggravated Assault (non-family felony);
- (21) Assault (non-family felony);
- (22) Illegal Drug Related Crimes (felony);
- (23) Terroristic Threat
- (24) Any criminal violation of laws or ordinances that regulate plumbing or the practice of plumbing.

(c) The Enforcement Committee shall use the following established levels of risks in determining the fitness of a person who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections. The levels of risk are listed in the order of highest to lowest. The Enforcement Committee shall consider those applicants with convictions of a sexual nature or first degree felony to be the highest risk and those applicants who have a conviction other than that of a sexual nature or first degree felony, and who have completed all required consequences of the conviction more than five years prior to the date of application to be the lowest risk.

(1) Level One - Applicants who have a conviction of a sexual nature listed in paragraph (b)(1)(A-P), regardless of whether or not the convicted person is required to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure.

(2) Level Two - Applicants who have a conviction for a first-degree or second-degree felony.

(3) Level Three - Applicants who have a conviction other than specified in Level One or Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed **less** than five years prior to the date of application, or are still being completed.

(4) Level Four - Applicants who have convictions other than specified in Level One and Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed **more** than five years prior to the date of application. Written proof of completion from the court, probation or parole officer must be submitted by the applicant.

(d) Applicants with multiple convictions will be considered an increased risk, depending on the number and types of convictions.

(e) The Enforcement Committee shall use these guidelines and follow the requirements of Board Rule Section 363.2 when reviewing applications for registration, examination and renewal of registrations, licenses and endorsements, to determine the fitness of applicants.