

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 98-F-02

Date issued: January 8, 1998

Requested by: Calvin N. Rolfson, Special Assistant Attorney General  
North Dakota Board of Nursing

- QUESTIONS PRESENTED -

I.

Whether state licensing boards may require that applicants for licensure disclose juvenile adjudications which would have required reporting as a crime if they were committed by an adult.

II.

Whether an applicant for licensure must disclose a juvenile adjudication for an offense that would be a crime as an adult in response to a question regarding whether the applicant has ever been arrested, charged, or convicted of a criminal offense.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that state licensing boards may require that applicants for licensure disclose juvenile adjudications which would have required reporting as a crime if they were committed by an adult. Whether a state licensing board requires disclosure of juvenile adjudications is a policy decision to be made by the state licensing board.

II.

It is my further opinion an applicant for licensure does not need to disclose a juvenile adjudication in response to a question regarding whether the applicant has ever been arrested, charged, or convicted of a criminal offense. It is my further opinion an applicant for licensure must disclose whether the applicant has ever been arrested for or charged with a criminal offense in response to a question regarding whether the applicant has ever been arrested for or charged with a criminal offense irrespective of the ultimate disposition of the arrest or charge.

- ANALYSES -

I.

N.D.C.C. § 27-20-51 provides, with limited exception, that juvenile court files and records "are closed to the public." Similarly, N.D.C.C. § 27-20-52 provides, with limited exceptions, that law enforcement records and files of a child found to be delinquent "may not be open to public inspection." Although these sections generally prohibit disclosure of juvenile records, they do not prevent a state licensing board from inquiring of an applicant concerning the applicant's juvenile record. No language in N.D.C.C. ch. 27-20 prohibits state licensing boards from inquiring about an applicant's juvenile record. Whether a state licensing board requests on a licensure application information regarding juvenile adjudications is a policy matter that must be decided by the licensing board.

Professional licensing boards should consider a number of factors when determining whether to question applicants about prior juvenile adjudications. Of primary importance is the purpose of N.D.C.C. ch. 27-20, which is to "provide for the care, protection, and wholesome moral, mental, and physical development of children" and to "remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior." N.D.C.C. § 27-20-01(1), (2). The provisions of N.D.C.C. ch. 27-20 clearly indicate the Legislature did not intend juvenile adjudications to hamper or impede the progress of youth or otherwise jeopardize their future. Relying on juvenile adjudications to deny licensure would be contrary to that policy. The policy embodied in N.D.C.C. ch. 27-20 must be balanced with a board's responsibility to obtain appropriate information from applicants to determine licensure eligibility.

Administrative difficulties also arise by asking questions regarding juvenile adjudications. Because a licensing board will not have access to juvenile records, see N.D.C.C. § 27-20-51, a licensing board cannot confirm the truthfulness of a response to a question regarding juvenile adjudications. In fact, if the adjudication occurred more than 10 years ago, the juvenile court records would have been destroyed.<sup>1</sup>

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<sup>1</sup> N.D.C.C. § 27-20-54(1) authorizes the North Dakota Supreme Court to establish a records retention schedule for juvenile records. Administrative Rule 19 provides the State Court Administrator is the

Finally, when considering whether to question applicants about juvenile adjudications, a professional licensing board should consider whether a juvenile adjudication can have any legal impact on an applicant's eligibility for licensure. A juvenile adjudication in North Dakota is not a conviction. N.D.C.C. § 27-20-33. Accordingly, an application for licensure cannot be denied pursuant to N.D.C.C. § 12.1-33-02.1 and similar provisions due to a juvenile adjudication. Depending on the underlying conduct, juvenile adjudication may be relevant in determining whether an applicant meets licensure requirements such as being fit to practice the profession or being of good moral character.

It is my opinion that N.D.C.C. ch. 27-20 does not prohibit state licensing boards from inquiring concerning applicants' juvenile records. Whether a state licensing board makes such an inquiry is a policy decision to be made by the board.

## II.

N.D.C.C. ch. 27-20 establishes the Uniform Juvenile Court Act.<sup>2</sup> One of the purposes of the act is "to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to substitute therefor a program of treatment, training, and rehabilitation." N.D.C.C. § 27-20-01(2). N.D.C.C. ch. 27-20 provides that a child may be adjudicated delinquent if the child has committed a delinquent act and is in need of treatment or rehabilitation. N.D.C.C. § 27-20-02(4). A "delinquent act" is, in essence, an act designated a crime under the law that is not a traffic offense. N.D.C.C. § 27-20-02(3).

N.D.C.C. § 27-20-33 addresses the impact of an order adjudicating a child delinquent. That section specifically provides that an adjudication pursuant to the Uniform Juvenile Court Act "is not a conviction of crime." Accordingly, a juvenile who has been adjudicated delinquent has not been convicted of a criminal offense. It is, therefore, my opinion an applicant for licensure does not need

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court record administrator and is responsible for developing a retention and disposition schedule of court records. The court's record retention schedule provides that records of juvenile adjudication will be destroyed after ten years.

<sup>2</sup> The response to the questions presented is based upon North Dakota law. The analysis and opinions might differ if the laws of another state apply (i.e., if the juvenile adjudication occurred in another state).

to disclose a North Dakota juvenile adjudication in response to a question regarding whether the applicant has ever been convicted of a criminal offense. It is important to note, however, that if a juvenile adjudication in another state is considered a conviction under that state's laws, the applicant would need to disclose the adjudication in response to such a question. An applicant for licensure would be required to disclose a juvenile adjudication in response to a question specifically questioning whether the applicant has ever been adjudicated a delinquent child.

Question II also asks whether an applicant for licensure must disclose a juvenile adjudication in response to a question regarding whether the applicant has ever been arrested or charged with a criminal offense. Whether an applicant for licensure has been adjudicated delinquent in the past is not relevant to a question regarding whether the applicant has ever been arrested or charged with a criminal offense. Whether the arrest and charge was for a criminal offense is a separate and distinct question unrelated to the ultimate disposition. A juvenile or adult could be arrested for a criminal offense but never convicted or adjudicated a delinquent. Because the question only addresses the arrest, not the disposition, an affirmative response would be required to the question. Similarly, a juvenile or adult could be charged with a criminal offense but never convicted or adjudicated a delinquent. Because the question only addresses the charge, not the disposition, an affirmative response would be required to the question. This part of the question focuses on the type of arrest or charge, not the disposition. Accordingly, it is my opinion an applicant for licensure need not disclose a juvenile adjudication in response to a question regarding whether the applicant has ever been arrested for or charged with a criminal offense. It is my further opinion an applicant for licensure must disclose whether the applicant has ever been arrested for or charged with a criminal offense in response to a question regarding whether the applicant has ever been arrested for or charged with a criminal offense irrespective of the ultimate disposition of the arrest or charge.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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