



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 16, 1996

Ms. Rachael Martin  
Executive Director  
Board of Law Examiners  
P.O. Box 13486  
Austin, Texas 78711-3486

Letter Opinion No. 96-088

Re: Whether the Board of Law Examiners may refuse to recommend issuance of a probationary law license to a chemically dependent person under certain circumstances (ID# 24736)

Dear Ms. Martin:

On behalf of the Board of Law Examiners (the "board") you request an attorney general's opinion about the board's authority to recommend against issuing a probationary law license to an applicant who suffers from chemical dependency. Your question requires us to review and interpret certain provisions of Government Code chapter 82, which establishes the board and defines its role in the licensing of attorneys.

Only the Texas Supreme Court may issue licenses to practice law in this state,<sup>1</sup> but the board, appointed by the supreme court and acting under its instructions, "shall determine the eligibility of candidates for examination for a license to practice law."<sup>2</sup> The supreme court may adopt rules on eligibility for examination for a license to practice law, which may include provisions to ensure good moral character of each candidate for a license.<sup>3</sup> Texas law students who intend to apply for admission to the State Bar of Texas must file a Declaration of Intention to Study Law with the board, including certain items of information required by statute.<sup>4</sup> The board is responsible for making character and fitness determinations about declarants<sup>5</sup> and may conduct an investigation of their moral character and fitness.<sup>6</sup> After completion of the investigation, the board shall determine

---

<sup>1</sup>Gov't Code § 82.021.

<sup>2</sup>*Id.* § 82.004(a).

<sup>3</sup>See Rules of Supreme Court Governing Admission to the Bar of Texas (1992) ("Rules Governing Admission to the Bar of Texas") (published in 833 S.W.2d - 834 S.W.2d at LXXXV).

<sup>4</sup>Gov't Code § 82.023.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.* § 82.028(a); see also Rules Governing Admission to the Bar of Texas VI(e).

whether the declarant possesses the good character and fitness required for admission to the Texas Bar and shall advise the declarant accordingly.<sup>7</sup>

Chapter 82 of the Government Code was substantially amended in 1991, by legislation that continued the board in existence after sunset review.<sup>8</sup> The 1991 legislation established a new class of license—the probationary license—to be issued to persons found to be chemically dependent.<sup>9</sup> If the board determines that a declarant may suffer from chemical dependency<sup>10</sup>

the board shall require the applicant to meet with representatives of the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar and may require the applicant to submit to a treatment facility for evaluation.

(f) If the board determines that an applicant suffers from chemical dependency, the board shall assist the applicant in working with the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar.<sup>11</sup>

If a person passes the bar examination, the board may not deny that person a probationary license to practice law “solely because the person suffers from chemical dependency,”<sup>12</sup> but it must specify conditions of the probationary license that are designed to protect the public.<sup>13</sup>

---

<sup>7</sup>Gov't Code § 82.028 - .030; *see also* Rules Governing Admission to the Bar of Texas VI(e).

<sup>8</sup>Act of May 27, 1991, 72d Leg., R.S., ch. 576, 1991 Tex. Gen. Laws 2056; *see also* Act of August 13, 1991, 72d Leg., 1st C.S., ch. 17, § 6.19, 1991 Tex. Gen. Laws 330, 348 (amending sunset provision).

<sup>9</sup>A probationary license expires after two years and the holder may then apply for a renewal or for a regular license to practice law according to requirements stated in section 82.038(f).

<sup>10</sup>“Chemical dependency” is defined as “the abuse of alcohol or a controlled substance,” “a pathological use of alcohol or a controlled substance that chronically impairs the applicant’s ability to competently provide legal advice or services,” or “a physiological or physical dependence on alcohol or a controlled substance.” Gov’t Code §§ 82.023(g)(1), .038(i)(1).

<sup>11</sup>Gov’t Code § 82.023(e), (f); *see also* Rules Governing Admission to the Bar of Texas VIII(c)(d).

<sup>12</sup>Gov’t Code § 82.038(d)(1).

<sup>13</sup>Conditions of a probationary license may include one or more of the following:

- (1) prohibiting the person from using alcohol or controlled substances;
- (2) treatment for chemical dependency;

The board wishes to know whether it may decline to recommend the issuance of a probationary license under the following circumstances:

A law student has filed a declaration of intention to study law and, after notice and a hearing, the board has determined that he or she is chemically dependent;

The board's order conditionally approves the requisite moral character and fitness but requires that the individual comply with certain conditions, such as total abstinence, attending Alcoholics Anonymous meetings, attending meetings of the Texas Lawyers' Assistance Program of the state bar or a similar program of the state bar. The order also provides that when the individual subsequently files an application for admission to the state bar, he or she must satisfy the concerns evidenced in the board's order at a hearing before the board.<sup>14</sup>

When the individual applies to take the bar exam, the board's investigation reveals that he or she has violated one or more of the conditions imposed by the board's prior order.<sup>15</sup>

You point out that the board may not deny a probationary license to a person who passes the bar exam "solely because the person suffers from chemical dependency," but you argue that the board's denial of a probationary license would be based upon the violations of the conditions imposed by the board's prior order, and not on the person's

---

(footnote continued)

- (3) supervision of the person's work by a licensed attorney;
- (4) submission to periodic drug testing;
- (5) periodic reporting by the person to the board; or
- (6) suspension, for a portion of the probationary period, of an activity for which a license to practice law is required.

*Id.* § 82.038(e).

<sup>14</sup>The Texas Supreme Court has authorized the board to determine that a declarant should be granted conditional approval of his or her character and fitness and to require that person to "meet such conditions as the Board deems appropriate." Rules Governing Admission to the Bar of Texas XV(f)(2).

<sup>15</sup>Applicants to take the bar exam must provide certain information updating the declaration of intention to study law and the board is to initiate an investigation of the applicant covering the time since the applicant filed the declaration of intent to study law, "unless other matters relevant to moral character or fitness not previously revealed in such Declaration shall have come to the attention of the Board." Rules Governing Admission to the Bar of Texas IX; *see also* Gov't Code § 82.027.

chemical dependency. Once issued, a probationary license may be immediately revoked if the person violates a condition of probation imposed by the board,<sup>16</sup> but no provision expressly authorizes the board to refuse an initial probationary license because the applicant has violated conditions imposed by the order approving his or her moral character and fitness. However, the fact that the applicant violated the conditions imposed by the board's prior order may be relevant to board's character determination about that person.

The board may not recommend any person for a license to practice law who has failed to show that he or she is of the moral character to be licensed;<sup>17</sup> nor may it recommend denial of a license because of a deficiency in the applicant's moral character or fitness unless

(1) the board finds a clear and rational connection between a character trait of the applicant and the likelihood that the applicant would injure a client or obstruct the administration of justice if the applicant were licensed to practice law; or

(2) the board finds a clear and rational connection between the applicant's present mental or emotional condition and the likelihood that the applicant will not discharge properly the applicant's responsibilities to a client, a court, or the legal profession if the applicant were licensed to practice law.<sup>18</sup>

If the board makes the required finding under this provision, it may recommend denial of a probationary license.

Whether the board may recommend denial of the probationary license in a given case, in particular, a case in which the applicant has violated one or more conditions imposed by the board's prior order, depends on all the facts and circumstances. It is a matter for the board's discretion, subject to judicial review,<sup>19</sup> and cannot be resolved in an attorney general opinion.<sup>20</sup>

---

<sup>16</sup>Gov't Code § 82.038(h).

<sup>17</sup>Gov't Code § 82.004(c).

<sup>18</sup>*Id.* § 82.028(c).

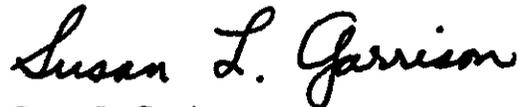
<sup>19</sup>See *Board of Law Examiners v. Stevens*, 868 S.W.2d 773 (Tex.), cert. denied, 114 S.Ct. 2676, (1994); *Board of Law Examiners v. Malloy*, 793 S.W.2d 753 (Tex. App.—Austin 1990, writ denied).

<sup>20</sup>The Americans with Disabilities Act of 1990 includes a provision concerning persons engaged in the illegal use of drugs, persons that have been rehabilitated from such use, persons who are alcoholics, and related matters. 42 U.S.C. § 12114.

S U M M A R Y

The Board of Law Examiners may not deny a probationary license to a person who passes the bar exam solely because the person suffers from chemical dependency. However, if the board has issued an order conditionally approving his or her character and fitness to practice law, and if the person has violated conditions attached to the order, the fact of such violation may be relevant to whether the person has the required moral character and fitness to practice law.

Yours very truly,

A handwritten signature in black ink that reads "Susan L. Garrison". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Susan L. Garrison  
Assistant Attorney General  
Opinion Committee