

1. Good Moral Character Standards

Background

The May 8 discussion identified broad concern that good moral character requirements are undefined, inconsistently applied, and potentially duplicative of background checks, disciplinary history questions, and application disclosures. Staff reported that good moral character requirements appear throughout the Montana Code Annotated and are not uniformly defined. Members also noted that some requirements may be federally required or tied to audit obligations, with real estate appraisers identified as a likely example for further review.

The subcommittee's discussion narrowed the issue to three principal paths: remove the standard where possible, define and narrow it where retained, or leave it to boards with minimal change.

Option 1A - Remove Good Moral Character Requirements Where Not Federally Required

Description. Recommend legislation removing good moral character language from occupational licensing statutes unless staff confirms that the requirement is mandated by federal law, compact obligations, accreditation requirements, or another binding external authority.

Pros:

- Reduces subjective and potentially inconsistent licensing barriers
- Avoids requiring applicants to satisfy an undefined moral standard
- Aligns with comments that existing background checks, application disclosures, disciplinary history questions, and compliance review already capture conduct relevant to public protection.
- May improve applicant confidence and reduce perceived barriers, particularly for applicants who may self-select out of licensure based on an undefined character requirement.
- Advances the task force goal of simplifying licensing and reducing non-value-added requirements.

Cons:

- May remove a discretionary tool some boards view as useful when they have serious concerns not captured by a conviction or formal discipline record.
- Could require extensive statutory review to avoid removing requirements that are federally required or tied to external compliance.
- May raise concern among boards or stakeholders in professions involving vulnerable populations or high public-safety risks.
- Does not itself resolve how boards should evaluate troubling noncriminal conduct.

Implementation considerations:

- Staff should prepare a list of all Title 37 good moral character references and identify which are subject to federal, compact, reciprocity, accreditation, or audit constraints.
- Drafting should preserve requirements where legally required
- If removal proceeds, staff should confirm that application personal-history questions and disciplinary disclosure questions remain authorized and operational.

Option 1B - Retain Only Where Value-Added and Define the Standard

Description. Recommend retaining good moral character requirements only for professions where staff and boards identify a continuing public-protection rationale, while adopting a uniform statutory definition and evidentiary standard for use across those professions.

Possible definition framework for discussion.

A retained standard could focus on objective, profession-related conduct, such as whether the applicant has engaged in conduct that has a direct and substantial relationship to the duties and public-protection risks of the profession, considering rehabilitation, time elapsed, mitigating circumstances, and current fitness to practice. Any denial based on lack of good moral character could require written findings and a defined evidentiary threshold.

Pros:

- Preserves a tool for boards in high-risk professions while reducing vagueness.
- Provides staff and applicants clearer expectations.
- Reduces risk of inconsistent board-by-board definitions.
- Can incorporate safeguards discussed by the subcommittee, such as direct relationship to professional duties and clear evidentiary support.
- May be more acceptable to boards that are reluctant to remove the requirement entirely.

Cons:

- Drafting a workable definition may be difficult and could create new litigation or administrative disputes.
- A definition that uses terms such as honesty, fairness, or respect may remain subjective unless tied to objective conduct.
- Could increase administrative burden if written findings and individualized analysis are required.
- May perpetuate a barrier if applicants still perceive the standard as vague or stigmatizing.

Implementation considerations:

- Determine whether a statutory definition is preferable to rulemaking. Staff indicated during the meeting that rulemaking authority may need legal review.
- If rulemaking is used, determine whether each board must adopt rules or whether a Department-wide rule can apply.
- Identify whether denial should require a “direct and substantial relationship” to the profession and whether “clear and convincing evidence” should be used.
- Ensure consistency with existing criminal-history evaluation statutes, board disciplinary statutes, and contested case procedures.
- Consider whether retained requirements should be limited to health care, fiduciary, vulnerable-population, controlled-substance, or public-safety professions.

Option 1C - No Broad Statutory Change; Leave GMC to Board Discretion

Description. Recommend no broad statutory change at this time or recommend that boards retain discretion to determine good moral character on a case-by-case basis.

Pros:

- Preserves maximum flexibility for boards with profession-specific knowledge.
- Avoids spending substantial task force time on an issue that some members noted may not be a major practical licensing barrier.
- Avoids unintended consequences from a hastily drafted definition.
- Allows future practice-act reviews to address the requirement board by board.

Cons:

- Leaves the core problem unresolved: undefined and potentially inconsistent standards.
- May conflict with the broader goal of standardized, efficient licensing processes.
- Does not address applicant deterrence or uncertainty.
- May allow different boards to apply materially different interpretations without legislative guidance.

Implementation considerations:

- If this option is selected, consider recommending a staff practice-act review schedule to identify and remove non-value-added moral character language over time.
- Consider issuing nonbinding board guidance rather than legislation.
- Consider requiring boards that rely on good moral character to state the specific public-protection rationale for retaining it.