

Division 22

CRIMINAL RECORDS CHECK

(Reader's Note: This is a whole new Division to Chapter 877 of the Oregon Administrative Rule. This implements legislation passed in 2005 that authorized this Board to require an FBI national background fingerprint check of applicants and some other categories of persons connected with the Board.)

OAR 877-022-0005

Requirements Pertaining to Criminal Records Check

(1) A person who wishes to be certified or licensed under this chapter must be fit to practice clinical social work as defined in OAR 877-020-0008. As part of a fitness determination, the board considers past conduct, including conduct that resulted in a criminal conviction, that is related to a person's honesty, or is related to the practice of social work. The purpose of this rule is to implement ORS 181.534(9) and provide for criminal records checks by the board. The results of criminal records checks are used by the board to determine fitness to practice clinical social work.

(2) The following persons must, upon request of the board, take the steps necessary to complete a request for a state or nationwide criminal records check under ORS 181.534:

(a) A person whose application form and fees for a certificate of Clinical Social Worker Associate is received by the Board on or after May 1, 2008.

(b) A person whose application form and fees for a license as a Licensed Clinical Social Worker is received by the Board on or after May 1, 2008.

(c) The holder of Certificate of Clinical Social Worker Associate or a license as a Licensed Clinical Social Worker who is the subject of inquiry by the board.

(3) To complete the request for criminal records, the board may require the person to:

(a) provide information necessary to obtain the criminal records check.

(b) provide fingerprints on forms made available by the board.

(c) pay the actual cost to the board of conducting the criminal records check.

(4) In reviewing the information obtained from a criminal records check, the board may consider:

- (a) any criminal conviction and related information a court could consider in imposing a punishment, in compliance with ORS 670.280
- (b) any arrests and records related to any crime that may be indicative of a person's inability to perform as a licensee or certificate holder with care and safety to the public.
- (5) Fitness determination. In deciding whether an individual is fit to hold a license or certificate, the board may consider:
 - (a) a criminal records background check.
 - (b) false statements made by the individual regarding criminal history of the individual.
 - (c) a refusal to submit or consent to a criminal records check including fingerprint identification.
 - (d) other pertinent information obtained as part of an investigation.
- (6) The board may make a fitness determination conditional upon the individual's acceptance of probation, conditions, limitations, or other restrictions upon licensure or certification. In the process followed by the board for making a fitness determination, the following apply:
 - (a) A person identified in section (2) of this rule who makes a false statement regarding the person's criminal history is unfit and subject to denial of an application for license or certificate or to disciplinary action authorized in ORS 675.510 to 675.990, including denial of an application for licensure or certification.
 - (b) If a person identified in section (2) of this rule refuses to consent to a criminal records check or refuses to be fingerprinted, the board will revoke the person's license or certificate or, in the case of an applicant for a certificate or license, will consider the application incomplete.
 - (c) For all [other] fitness determinations not covered by subsection (a) or (b) of this section, the board will consider, at a minimum, the following:
 - (A) The nature of the crime of which the person has been convicted or indicted;
 - (B) The facts that support the conviction or pending indictment or that indicate the making of the false statement;
 - (C) The relevancy, if any, of the crime or the false statement to the specific requirements of the person's present or proposed position as a holder of a certificate or license; and
 - (D) Intervening circumstances relevant to the responsibilities and circumstances of the position as a holder of a certificate or license. Intervening circumstances include but are not limited to the following factors with respect to a crime of which the person has been convicted:
 - (i) The passage of time since the commission of the crime;

- (ii) The age of the subject individual at the time of the crime;
- (iii) The likelihood of a repetition of an offense or of the commission of another crime;
- (iv) The subsequent commission of another relevant crime;
- (v) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
- (vi) A recommendation of an employer who employed the person after the conviction.

(E) Other relevant information.

(7) Protection of information:

(a) Information obtained by the board in carrying out its responsibilities under this rule is considered part of the investigation of an applicant or licensee and is confidential under ORS 676.175.

(b) Criminal offender information obtained from the Law Enforcement Data System must be handled in accordance with the applicable requirements in ORS chapter 181 and OAR chapter 257, division 15.

(8) The board will permit the person for whom a fingerprint-based criminal records check is conducted to inspect the individual's own state and national criminal offender records in the possession of the board and, if requested by the applicant, provide the individual with a copy of those records.

(9) Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or Federal Bureau of Investigation must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or the reporting agency and not to the board.

(10) A person against whom disciplinary action is taken by the board on the basis of information obtained as the result of a criminal records check conducted pursuant to this rule is entitled to notice and hearing in accordance with the provisions for contested cases in ORS chapter 183.