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**PERMANENT ADMINISTRATIVE RULES**

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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Oregon Medical Board 847

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Agency and Division Administrative Rules Chapter Number  
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To become effective Upon filing. Rulemaking Notice was published in the August 2016 Oregon Bulletin.

**RULE CAPTION**

Criminal Records Checks for Applicants and Licensees

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

847-008-0068

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 181A.195, 181A.215, 676.303, 677.265

**Other Authority:**

**Statutes Implemented:**

ORS 181.534, 181A.170, 181A.195, 181A.215, 670.280, 676.330, 677.100, 677.265

**RULE SUMMARY**

The rule amendment references new statewide rules on criminal records checks recently adopted by the Department of Administrative Services (DAS) and includes language specific to the Oregon Medical Board that is consistent with ORS chapter 181A and the DAS rules. The rule (1) gives the purpose, (2) specifies the individuals subject to the criminal records check under this rule includes all applicants and licensees, (3) incorporates the statewide rules on how a criminal records check is conducted, (4) provides the factors the Board will consider when making a fitness determination, (5) provides the potential fitness determination outcomes and their consequences, (6) maintains that criminal records information is confidential, (7) requires the Board to provide criminal records information to the individual subject to the check, (8) provides the appeals process, (9) maintains the fee charged to the individual. This rulemaking is necessary due to House Bill 3168 (2013) and House Bill 2250 (2015). These bills gave DAS authority to adopt statewide administrative rules for criminal records checks and require other agencies to repeal or amend their existing rules that may conflict with the statewide rules.

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OREGON ADMINISTRATIVE RULES

CHAPTER 847, DIVISION 008 – OREGON MEDICAL BOARD

FINAL REVIEW – OCTOBER 2016

The rule amendment references new statewide rules on criminal records checks recently adopted by the Department of Administrative Services (DAS) and includes language specific to the Oregon Medical Board that is consistent with ORS chapter 181A and the DAS rules. The rule specifies that applicants and licensees are subject to a criminal records check under this rule, refers to statewide rules on criminal records checks, provides the appeals process, and maintains the fee charged to the individual. This rulemaking is required by House Bill 3168 (2013) and House Bill 2250 (2015), which gave DAS authority to adopt statewide administrative rules for criminal records checks and required other agencies to repeal or amend existing rules as needed in order to be consistent with the statewide rules. There is no change to the existing process.

OAR 847-008-0068

State and Nationwide Criminal Records Checks, Fitness Determinations

(1) The purpose of ~~[these rules]~~ **this rule** is to provide for the reasonable screening of **physician, physician assistant, and acupuncturist** applicants and licensees in order to determine if they have a history of criminal behavior such that they are not fit to be granted or ~~[renewed]~~ **to hold** a license that is issued by the Board.

~~[(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.]~~

~~[(3)]~~ **(2)** The Board may require legible fingerprints **for the purpose of a criminal records check and fitness determination** of all applicants ~~[for a medical (MD/DO), podiatric (DPM), physician assistant (PA), and acupuncturist (LAc) license, licensees reactivating their license, licensees renewing their license]~~ and licensees ~~[under investigation to determine the fitness of an applicant or licensee]~~, **including:**

**(a) Applicants for a license;**

**(b) Licensees applying to reactivate a license;**

**(c) Licensees renewing a license; and**

**(d) Licensees under investigation.**

**(3) Criminal records checks and fitness determinations are conducted according to ORS 181A.170 to 181A.215, ORS 670.280, and OAR 125-007-0200 to 127-007-0310.**

~~(a) [These fingerprints will be provided on prescribed forms made available by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board; the]~~ **The** Board will ~~[submit fingerprints to]~~ **request** the Oregon Department of State Police to conduct a ~~[Criminal History Check and a National Criminal History Check]~~ **state and nationwide criminal records check**. Any original fingerprint cards will subsequently be destroyed.

**(b) All background checks must include available state and national data, unless obtaining one or the other is an acceptable alternative.**

**(c) The applicant or licensee must disclose all arrests, charges, and convictions regardless of the outcome or date of occurrence. Disclosure includes any military, juvenile, expunged or set aside criminal records.**

**(d) The Board may require additional information from the applicant or licensee, such as, but not limited to, proof of identity, previous names, residential history or additional criminal, judicial or other background information.**

~~[(4) The Board will determine whether an applicant or licensee is fit to be granted a license based on the criminal records background check, any false statements made by the applicant or licensee regarding the criminal history of the individual, any refusal to submit or consent to a criminal records check including fingerprint identification, and any other pertinent information obtained as part of an investigation. If an applicant is determined to be unfit, the applicant may not be granted a license. If the licensee is determined to be unfit, the licensee's license may not be reactivated or renewed. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.]~~

~~[(5)]~~ **(4)** ~~[In making the fitness determination]~~ **If the applicant or licensee has potentially disqualifying criminal offender information,** the Board will consider **the following factors in making the fitness determination:**

- (a) The nature of the crime;
  - (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 applicant's or licensee's present or proposed license; ~~[and]~~
  - (d) Intervening circumstances relevant to the responsibilities and circumstances of the license.
- Intervening circumstances include but are not limited to:

- (A) The passage of time since the commission of the crime;
- (B) The age of the applicant or licensee at the time of the crime;
- (C) The likelihood of a repetition of offenses or of the commission of another crime;
- (D) The subsequent commission of another relevant crime;
- (E) Whether the conviction was set aside and the legal effect of setting aside the conviction;

and

(F) A recommendation of an employer[-];

**(e) Any false statements or omissions made by the applicant or licensee; and**

**(f) Any other pertinent information obtained as part of an investigation.**

~~[(6) All background checks must include available state and national data, unless obtaining one or the other is an acceptable alternative.]~~

~~[(7) In order to conduct the Oregon and National Criminal History Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary, such as but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.]~~

**(5) The Board will make a fitness determination consistent with the outcomes provided in OAR 125-007-0260.**

**(a) A fitness determination approval does not guarantee the granting or renewal of a license.**

**(b) A restricted or conditional approval may necessitate probation, conditions, limitations, or other restrictions on licensure.**

**(c) A denial prohibits the applicant from being granted a license or prohibits the licensee from holding a license.**

**(d) An incomplete fitness determination results if the applicant or licensee refuses to consent to the criminal history check, refuses to be fingerprinted or respond to written correspondence, or discontinues the criminal records process for any reason. Incomplete fitness determinations may not be appealed.**

~~[(8)]~~ **(6)** Criminal offender information is confidential. Information received may be disseminated only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).

~~[(9)]~~ **(7)** The Board will permit the individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records

and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

~~[(10) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests and court records that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.]~~

~~[(11) ]~~ **(8)** ~~[If an]~~ **An** applicant or licensee **may appeal a final fitness determination pursuant to OAR 125-007-0300.** ~~[is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.414-183.470.]~~ Challenges to the accuracy or completeness of **criminal history** information **must be made in accordance with OAR 125-007-0300(7).** ~~[provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.]~~

~~[(12) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, the application is considered incomplete.]~~

~~[(13) ]~~ **(9)** The applicant or licensee must pay a criminal records check fee **for the actual cost of acquiring and furnishing the criminal offender information.**

Stat. Auth.: ORS **181A.195, 181A.215, 676.303,** 677.265

Stats. Implemented: ORS [~~181.534~~] **181A.170, 181A.195, 181A.215, 670.280, 676.303,** 677.100, 677.265