

Chapter 811  
Division 10

**Fitness Determinations for Licensure; State and Nationwide Criminal Background Checks**

**811-010-0084** (1) Purpose. The purpose of this rule is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they are not fit to be granted a license or certificate, registration, permit in occupations, or professions covered by Oregon Laws 2005, chapter 730.

(2) These rules are to be applied when evaluating the criminal history of a subject individual and conducting fitness determinations based upon such history. The fact that a subject individual is approved does not guarantee the granting of a license, certification, registration, or permit.

(3) "Subject individual" means a person from whom the Board may require fingerprints for the purpose of enabling the Board of Chiropractic Examiners to request a state or nationwide criminal records check. Under this chapter, subject individual means applicants for doctor of chiropractic license, applicants for chiropractic assistant certification, and any licensee under investigation as ordered by the Board.

(4) The Board may request that the Department of State Police conduct a Criminal History Check and a National Criminal History Check, using fingerprint identification, of subject individuals. The Board may conduct criminal records checks on subject individuals and any licensee/certificate holder under investigation through the Law Enforcement Data System maintained by the Department of State Police in accordance with rules adopted, and procedures established, by the Department of State Police. Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with applicable Oregon State Police requirements in ORS chapter 181 and OAR Chapter 257, Division 15.

(5) Additional Information Required. In order to conduct an Oregon and National Criminal History Check and fitness determination, the Board may require additional information from the subject individual 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.

(6) The Board shall determine whether an applicant is fit to be granted a license or certification, based on the criminal records background check, on any false statements made by the individual regarding the criminal history of the individual, on 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 a subject individual is determined to be unfit, then the individual may not be granted a license or certification. The Board may make a fitness determination conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(7) Except as otherwise provided in section 6 in making the fitness determination the Board shall consider:

- (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 subject individual's present or proposed position, services, employment, license, certification or registration; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification, registration or permit. Intervening circumstances include but are not limited to:

- (A) The passage of time since the commission of the crime;
- (B) The age of the subject individual 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.

(8) All background checks shall be requested to include available state and national data, unless obtaining one or the other is an acceptable alternative.

(9) Criminal offender information is confidential. Dissemination of information received under ORS ~~(HB 2157) 181A.195~~ is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant, licensee and certificate holder and as such is confidential pursuant to ORS 676.175(1). All original fingerprint cards will be destroyed per ORS ~~(HB 2157) 181A.195~~.

(10) The Board will permit the subject 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.

(11) The Board may consider any felony or misdemeanor conviction involving moral turpitude.

(12) If an applicant, licensee or certificate holder is determined not to be fit for a license and/or certificate, they are entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy or completeness of information provided by the Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process pursuant to ORS 183.

(13) Request for Re-Evaluation Following Correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agency reporting information to the Board, the Board will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.

(14) If the subject individual discontinues the application or fails to cooperate with the criminal history check process then the application is considered incomplete.

*Statutory Auth.: ORS 684*

*Stats. Implemented: ORS 684.100, ORS 183*

*Adopted May 19, 2016*

*Effective June 6, 2016*