

BOARD OF PHARMACY
DIVISION 10
BOARD ADMINISTRATION AND POLICIES

Criminal Background Checks
Employees, Applicants for Employment and Volunteers

855-010-0050

Purpose

The purpose of these rules is to provide for the reasonable screening of subject individuals to determine if they have a history of criminal behavior such that they are not fit to work or volunteer for the Board. The fact that the Board determines that a subject individual is fit does not guarantee the individual a position as a Board employee, volunteer, or that the individual will be hired by the Board.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

855-010-0055

Definitions

As used in OAR 855-010-0050 through 855-010-0086, unless the context of the rule requires otherwise, the following definitions apply:

- (1) Conviction: A final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) or any determination of guilt entered by a court of law against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.
- (2) Fitness determination: A determination made by the Board, pursuant to the process established under OAR 855-010-0060, that a subject individual is fit or not fit to be a Board employee or volunteer.
- (3) Criminal offender information: Records and related data concerning physical description and vital statistics, fingerprints received and compiled by the Oregon State Police (OSP) to identify criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release records.
- (4) Criminal records check: One or more of the following three processes undertaken by the Board to check the criminal history of a subject individual:
 - (a) A name-based check of criminal offender information conducted through the Law enforcement Data System (LEDS) maintained by the OSP, in accordance with the rules adopted and procedures established by the OSP;
 - (b) A check of Oregon criminal offender information, through fingerprint identification and other means, conducted by the OSP at the Board's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, through fingerprint identification and other means, conducted by the OSP through the FBI or otherwise at the Board's request (Nationwide Criminal Records Check).

(5) Criminal Records Request form: A Board-approved form, completed by a subject individual, requesting the Board to conduct a criminal records check.

(6) False statement: In association with an activity governed by these rules, a subject individual either:

(a) Provided the Board with false information about the subject individual's criminal history, including but not limited to false information about the individual's identity or conviction record; or

(b) Failed to provide the Board information material to determining the individual's criminal history.

(7) Subject Individual: An individual identified in OAR 855-010-0057 as someone from whom the Board may require a criminal records check.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

855-010-0057

Subject Individual

The Board may require a subject individual to complete a criminal records check pursuant to these rules because the person is:

(1) A Board employee

(2) A Board volunteer; or

(3) An applicant for employment with the Board.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

855-010-0060

Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

(a) Preliminary to a criminal records check, a subject individual must complete and sign the Board Criminal Records Request form and a fingerprint card. Both forms ask for identifying information (e.g., name, birth date, social security number, physical characteristics, driver's license or identification card number and current address of the subject individual). The Board Criminal Records Request form also requires information about the subject individual's prior residences in other states and any other identifying information deemed necessary by the Board.

(b) A subject individual must complete and submit to the Board the Criminal Records Request form and, if requested, a fingerprint card within five business days of receiving the forms. The Board may extend the deadline for good cause.

(c) The Board may require additional information from the subject individual as necessary to complete the criminal records check and fitness determination, such as, but not limited to, proof of identity, or additional criminal, judicial, or other background information.

(d) The Board shall not request a fingerprint card from a subject individual under the age of 18 years unless the subject individual is emancipated pursuant to ORS 419B.550 *et seq.*, or unless the Board also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Notwithstanding, failure to consent may be construed as a refusal to consent under OAR 855-010-0065(3).

(2) When a Criminal Records Check is required. The Board may conduct, or request the OSP to conduct, a criminal record check when:

(a) An individual meets the definition of a subject individual; or

(b) Required by federal law or regulation, by state statute or administrative rule, or by contract or written agreement with the Board.

(3) Which Criminal Records Check is conducted. When the Board determines under section (2) of this rule that a criminal records check is needed, the Board may request or conduct a LEDS Criminal Records Check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

855-010-0065

Final Fitness Determination

(1) If the Board elects to conduct a criminal records check, the Board shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 855-010-0060(1), any criminal records check conducted, and any false statement made by the subject individual.

(2) In making a fitness determination about a subject individual, the Board will also consider the factors in subsections (a) through (f) below in relation to information provided by the subject individual under OAR 855-010-0060(1), any LEDS report or criminal offender information obtained through a criminal records check, and other information known by the Board. To assist in considering these factors, the Board may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other criminal offender information from the subject individual, the Board may request to meet with the subject individual, and may request to receive written materials or authorization to obtain other relevant information, from the subject individual. The subject individual shall meet with the Board if requested and provide additional information or authorization within a reasonable period of time, as established by the Board. The Board will use all collected information in considering:

(a) Whether the subject individual has been convicted, found guilty except for insanity (or a comparable disposition), or has a pending indictment for a crime listed in OAR 855-010-0067;

(b) The nature of any crime identified under section (2)(a) of this rule;

(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(d) Any facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under section (2)(a) of this rule or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under section (2)(a) of this rule;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under section (2)(a) of this rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 855-010-0067;

(E) Whether a conviction identified under section (2)(a) of this rule has been set aside, and the legal effect of setting aside the conviction;

(F) A recommendation of an employer;

(G) The disposition of a pending indictment identified under section (2)(a) of this rule;

(H) Whether the subject individual has been arrested for or charged with a crime listed under OAR 855-010-0067;

(I) Whether the subject individual is being investigated, or has an outstanding warrant, for a crime listed under OAR 855-010-0067;

(J) Whether the subject individual is currently on probation, parole or another form of post-prison supervision for a crime listed under 855-010-0067;

(K) Whether the subject individual has a deferred sentence or conditional discharge in connection with a crime listed under OAR 855-010-0067;

(L) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 855-010-0067 if committed by an adult;

(M) Periods of incarceration of the subject individual;

(N) The education and work history (paid or volunteer) of the subject individual since the commission or alleged commission of a crime.

(3) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the Board will deny the employment of the subject individual or deny any applicable position or authority to provide services. A person may not appeal any determination made based on a refusal to consent.

(4) If a subject individual is determined to be not fit, the subject individual may not be employed by or provide services as a volunteer to the Board.

(5) Final Order. A completed final fitness determination is a final order of the Board unless the affected subject individual appeals the determination by requesting a contested case hearing as provided by OAR 855-010-0080(2) or an alternative appeals process as provided by OAR 855-010-0080(6).

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

OAR 855-010-0067

Potentially Disqualifying Crimes

(1) Crimes Relevant to a Fitness Determination:

- (a) All felonies;
- (b) All misdemeanors;
- (c) Any United States Military crime or international crime;

(2) Evaluation of Crimes. The Board shall evaluate a crime on the basis of the law of the jurisdiction in which the crime or offense occurred, as those laws are in effect at the time of the fitness determination.

(3) Expunged Juvenile Record. Under no circumstances shall a subject individual be determined to be not fit under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and ORS 419A.262.
Stat. Auth.: ORS 181.534, 676.303, 689.205
Stats. Implemented: ORS 181.534

855-010-0070

Incomplete Fitness Determination.

(1) The Board will close a preliminary or final fitness determination as incomplete when:

- (a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 855-010-0057;
- (b) The subject individual does not submit materials or information within the time required under OAR 855-010-0060;
- (c) The Board cannot locate or contact the subject individual;
- (d) The subject individual fails or refuses to cooperate with the Board's attempts to acquire other criminal records information under OAR 855-010-0065; or
- (e) The Board determines that the subject individual is not eligible or not qualified for the position of employee or volunteer, for a reason unrelated to the fitness determination process.
- (f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 855-010-0080(2) or a right to an alternative appeals process under OAR 855-010-0080(6) to challenge the closing of a fitness determination as incomplete.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

855-010-0075

Notice to Subject Individual of Fitness Determination.

The Board shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via personal service, or registered or certified mail to the most current address provided by the subject individual, of such disqualification.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

855-010-0080

Appealing a Fitness Determination

(1) Purpose: Sections (2) to (5) of this rule set forth the contested case hearing process a subject individual must use to appeal a completed final fitness determination made under OAR 855-010-0065 that the individual is not fit to hold a position with, or provide services to the Board as an employee or volunteer. Section (6) of this rule identifies an alternative appeal process available only to current Board employees.

(2) Appeal process.

(a) To request a contested case hearing, the subject individual or the subject individual's legal representative must submit a written request for a contested case hearing to the address specified in the notice provided under OAR 855-010-0075. To be timely, the request must be received by the Board at the specified address within 14 calendar days of the date stated on the notice. The Board shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Board under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(3) Discovery. The Board or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided under OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge will issue a proposed order.

(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent.

(c) Default. A completed final fitness determination made under OAR 855-010-0065 becomes final:

(A) Unless the subject individual makes a timely request for a hearing; or

(B) When a party withdraws a hearing request, notifies the Board or the ALJ that the party will not appear, or fails to appear at the hearing.

(6) Alternative Process. A subject individual currently employed by the Board may choose to appeal a fitness determination either under the process made available by this rule or through a process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit or not fit. Under no circumstances shall the Board be required to place a

subject individual in any position, nor shall the Board be required to accept services or enter into a contractual agreement with a subject individual.

(8) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the OSP, the FBI, or agencies reporting information to the OSP or the FBI.

(a) To challenge information identified in this section of the rule, a subject individual may use any process made available by the agency that provided the information.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the OSP, the FBI, or an agency reporting information to the OSP or the FBI, the subject individual may request that the Board conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 855-010-0065 by submitting a new Board Criminal Records Request form. This provision only applies if the position for which the original criminal history check was conducted is vacant and available.

(9) Appealing a fitness determination under section (2) or section (6) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under section (8)(b) of this rule, will not delay or postpone the Board's hiring process or employment decisions.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

855-010-0085

Recordkeeping and Confidentiality

Any information obtained in the criminal records check is confidential. The Board must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the Board, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534

855-010-0087

Fees

(1) The Board may charge a fee for acquiring criminal offender information for use in making a fitness determination that will not exceed the fee charged the Board by the OSP and the FBI to obtain such information.

(2) The Board may charge the fee to the subject individual on whom criminal offender information is sought.

Stat. Auth.: ORS 181.534, 676.303, 689.205

Stats. Implemented: ORS 181.534