## Criminal Background Checks: An Important Public Protection Issue

*This article is based on a presentation by Maryann Alexander, PhD, RN, National Council of State Boards of Nursing, and Shiri Ahronovich Hickman, JD, State Legislative and Policy Manager, Federation of State Medical Boards at the 2014 FSBPT Annual Meeting.*

### National Council of State Boards of Nursing Presentation

Criminal background checks (CBCs) in nursing are becoming extremely important and in some cases, absolutely necessary. There are 55 Boards of Nursing (BON) – excluding territories – of which 41 conduct biometric criminal background checks, five are introducing legislation this year, and 14 still need to do CBCs.

While nearly all jurisdictions ask applicants to self-report any criminal history upon application for licensure, data reflect that many nurses with criminal histories fail to self-report, according to Council of State Governments, 2012.

Although legislators often say self-reporting is sufficient for their nurses, that is, unfortunately, not the case.

Biometric-based CBCs are important for:

- Public Protection – To make an informed decision about licensure.
- Effectiveness – To obtain thorough information on applicants.

Name-based CBCs do not necessarily return a full criminal history. In Illinois, it was found that the average person with a serious background check has seven aliases, with the record being 69. Only a fingerprint or biometric-based CBC will find all of these.

Name-Based vs. Biometric-Based
Named-based checks use personal identifiers but may produce inaccurate identification and multiple hits. Personal identifiers can be manipulated, resulting in a false “no hit” response, or a false negative. This type of check is not accepted by the FBI.

Biometric-based checks allow a biometric search of the Automated Fingerprint Identification System (AFIS) and Next Generation Identification (NGI) – retina, face, palm, and tattoo identification. This provides positive identification with no multiple hits because biometrics do

not change.

It is recommended that boards keep records of stories on individuals to be shared with other boards to broaden the scope of understanding for the need for biometric criminal checks.

The following are some stories based on just such case studies.

**Case Study 1** – LPN is asked if she has been convicted of a felony.

The Biometric-Based CBC revealed the LPN had been convicted of armed robbery, attempted murder, felony theft, and felony retail theft. With this information, the BON was able to make an informed decision.

**Case Study 2** – Question: Have you ever been convicted of a crime other than a minor traffic violation?

Fingerprint showed the applicant was convicted of murder in 1972 and served a prison sentence. The Biometric CBC revealed this in 2008, while the applicant had answered "No" on the initial application in 1981. This shows that licensing bodies cannot rely on self-disclosure or employer background checks. It is important to know all the information.

**Case Study 3** – Imposters

The IRS notified an RN that he owed taxes on income earned in Kansas and Missouri, although he had never worked there and was only licensed in New Mexico. He reported that someone had stolen has identity and obtained licenses in those two states. The imposter (through fingerprint identification) was found to have had served a partial sentence for aggravated rape.

The statistics bear out the problem. For example, since implementing Biometric CBCs in Kansas, 14.5% of the applicants were found to have a criminal history, of which 29% had failed to self-disclose. In Louisiana, a study of nursing students (using fingerprint checks) showed 14.7% had a criminal history, with 18.2% failing to self-disclose. Before using fingerprint checks, Texas found 35 people had not self-disclosed their criminal background; after using fingerprint checks they found 262.

It is recommended that BONs use the Next Generation Identification: Federal Rap Back System that was launched in September 2014. Licensing bodies "subscribe" to an applicant's record when submitting biometrics at a low cost. Automated notifications are sent out when the licensee's criminal record changes.

What do the BONs do with the information? How can they be consistent with their evaluation and know that a licensee won't commit the same or a worse crime?

Some evidence-based guidelines were developed, based on the literature and an expert panel of a forensic psychologist, criminologist, attorney, parole officer, and members of a BON.

BONs need to know – does this person demonstrate criminal thinking and thereby pose a threat to the public safety if licensed?

The panel looked at four types of offenses that come before the BON:

- Minor Offenses – noise violations, littering, etc.
- Substance Use Disorder within the past five years
- Crimes of a Sexual Nature
- Other Serious Offenses

BON should develop a matrix for minor offenses and how to look at those. On the application, the applicant can explain the offense. If it is minor and the applicant has fulfilled all court mandates, then it is probably safe to issue a license. If the explanation is not plausible, further screening is necessary.

Advanced screening should look at minor offenses, serious offences, crimes of a sexual nature, substance use, and “criminal thinking.”

Minor offenses should be examined with an eye on a lack of honest disclosure. Is the explanation on personal statement incongruent with the CBC report or other document?

Serious offenses includes a series of misdemeanors or those that suggest the individual has a pattern of behavior, or any misdemeanor the board believes warrants further investigation.

A psychological evaluation is required for all individuals convicted of a sexual offense involving a minor or performing a sexual act against the will of another person.

Substance use requires a substance use disorder evaluation and then proceeds with the Board’s routine policies and procedures.

For all others, there are means of testing to determine “criminal thinking” on the part of the applicant. This is an Integrative Assessment of Applicants and includes Psychological and Personality Testing using forensic psychologists and similar testing that are highly valid and reliable.

Questions may be referred to: cbc-calltoaction@ncsbn.org

**Federation of State Medical Boards Presentation**

National Trend in Criminal Background Checks
The national trend in public protection as it relates to healthcare is an increased use of criminal background checks and quicker access to timely criminal history data.

Several state medical boards and the Federation of State Medical Boards (FSMB) have advocated for legislative authority to perform federal-level criminal background checks and to have statutory authority to conduct fingerprint-based, federal-level criminal background checks to meet their missions.

State medical boards are always concerned with the physical, mental, and moral fitness of prospective licensure candidates. Applications commonly ask questions about personal history, work history, and physical and mental history that may impact their ability to practice and look

into the applicant's criminal record.

The Maryland Board of Physicians has not conducted such criminal background checks. However, it was recently discovered that a physician was practicing as a family practitioner in Maryland who had been convicted and imprisoned in 1987 for raping a woman at gunpoint in Florida. It was only discovered after an Urgent Care patient accused the doctor of sexual harassment. Because of this case, the Maryland Board is seeking authority to conduct criminal background checks on applicants.

Criminal background checks (CBCs) for use by medical boards would include reports of all types of criminal offenses – felonies and misdemeanors, all types of adjudications such as convictions, all legal processes not yet resolved (pending court dispositions, etc.), and all other types of offenses.

State medical boards that conduct criminal background checks have statutory authority to refuse a license or take action against a licensee when an applicant or licensee has been convicted of a crime that could have an impact on that person's ability to practice with reasonable skill and safety.

Most state medical boards don't automatically ban a licensee due to a conviction, but will use it as a consideration in the licensing using a variety of evaluations – time elapsed, self-disclosure, rehabilitation, etc. The applicant bears the burden of proof of rehabilitation.

In 1998, the FSMB first recommended that boards conduct criminal checks on physicians seeking full or partial licensure. That would include all types of criminal offenses – felonies and misdemeanors and all types of adjudications such as convictions. Applicants should have satisfactorily passed a criminal background check according to Essentials of a State Medical and Osteopathic Practice Act.

Still, CBCs for licensure varies. Forty-five state medical boards conduct criminal background checks as a condition of initial licensure. Thirty-nine state medical boards require fingerprints as a condition of licensure. And, 43 state medical boards have access to the Federal Bureau of Investigation database.

Applicants can show evidence of rehabilitation by exhibiting release orders; that a year has passed since release without subsequent convictions; that they have complied with / completed all terms and conditions of parole or probation; that their age at the time of the crime is a mitigating factor; and through letters of reference.

State medical boards have differing requirements to move on with the licensing process, such as a criminal conviction waiver, self-reporting, and disciplinary action or denial of license for failure to report.

Of those state medical boards not conducting criminal background checks, they usually use self-reporting as the start of a background check and still can have the authority to deny a license.

Other issues to consider on CBCs are the failure to self-disclose, other avenues to learn of convictions, the cost / benefits for fingerprinting / criminal background check and processing,

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adapting to technology / “rap back” as new technology develops regularly, the Interstate Medical Licensure Compact and criminal background checks. The Licensure Compact requires the state in which the applicant wants to be licensed to conduct a criminal background check with fingerprint results. The compact also allows for future technology advances.

There clearly is more work that needs to be done on CBCs so the public and profession are protected.

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