

BOARD OF REGISTERED NURSING

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BACKGROUND CHECKS FOR STUDENT CLINICAL PLACEMENT

During the past year the Board of Registered Nursing (BRN) has received numerous questions regarding the issue of background checks on registered nursing students prior to clinical placement. The Board has been asked to assist programs with meeting this major new requirement.

The use of background checks on individuals working in clinical settings is one of the means agencies use to help protect their clients/patients. While obtaining background checks on employees is not new for clinical agencies, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) has recently added to their Human Resources standards (HR.1.20) a section related to criminal background checks. The JCAHO standard requires agencies to include nursing students in criminal background checks *when required by state law, regulation or hospital policy.* (www.jcaho.com)

The BRN does not require prelicensure nursing programs to screen potential students for a history of convictions prior to acceptance into their program. The BRN only requires background checks on criminal convictions at the time of application for licensure. Furthermore, BRN staff reviews all applications ~~with prior convictions on an individual case-by-case basis~~ before issuing or denying licensure. The criteria used by the Board in evaluating an applicant's present eligibility for licensure are found in the California Code of Regulations (CCR) Section 1445. (www.rn.ca.gov)

Clinical agencies have the right to establish criteria that would exclude a student from placement at their facility. Those clinical agencies that have a policy that include student nurses in their requirement for criminal background checks will need to comply with their own policy to be compliant with the JCAHO Standard. HR 1.20. On the other hand agencies may use different criteria for students than are used for employees or exempt them entirely and still meet JCAHO Standards.

Nursing programs should establish a written policy describing the process for obtaining background checks for those clinical agencies that require them. The Board recommends that the policy on background checks, like all program policies, be published in documents that are available to applicants and students, examples include admission packets and school catalogs and or nursing student handbooks. The written policies should include the following:

- Who will perform the search (the college, the agency or an independent service);

- Who will pay for the process;
- Where and by whom the results will be maintained and protected (student confidentiality);
- What criteria will be used to exclude a student from a particular clinical placement; and
- What alternatives if any will be available in the event a student is denied a clinical placement.

The Board encourages clinical agencies and nursing programs to work collaboratively in establishing standardized policies that are the least restrictive possible while also protecting the rights of consumers. A process that allows for a case-by-case review of students with prior convictions is encouraged. However, the burden of proof lies with the student to demonstrate evidence of rehabilitation that is acceptable to the clinical agencies and the nursing program. (See the document "Prior Convictions and Disciplinary Actions" on the Board's Website.)

Frequently Asked Questions Related to Background Checks:

Question: Does the BRN require student nurses to undergo criminal background checks prior to admission in a prelicensure school of nursing?

No. The Board has no authority to request a criminal background check except at the time of application for licensure.

Question: Does the Joint Commission on Accreditation of Healthcare Organization (JCAHO) require that student nurses in California have criminal background checks done prior to the students participating in a clinical rotation in a JCAHO approved facility?

No. JCAHO requires that clinical agencies follow state law/regulation and their own organization's policy regarding background checks on students. (See JCAHO website www.jcaho.com) There is no state law in California that mandates background checks be completed on nursing students. Some clinical agencies have included student nurses in the category of individuals that need to be screened, therefore, JCAHO would also require that nursing students need background checks done.

Question: If a clinical agency denies a student with a prior conviction from being placed at their facility does the BRN require that the student be dropped from that course or from the program?

No. The program is encouraged to evaluate such students, in collaboration with their clinical agencies, to find possible alternatives for the student to complete the objectives of the course. All students are expected to meet course objectives as defined by the course syllabi and program policy.

Question: If students have had a criminal background check done as part of clinical placement can they use that information as part of their application packet for licensure?

No. The Board requires a background check on all applicants for licensure by the Department of Justice. As a health care licensing Board, the background check conducted on applicants is more extensive than most employers obtain.

Question: If a student is denied access to a clinical site due to a positive criminal background check does the nursing program have to find an alternative site for the student to meet course requirements?

No. The Board encourages programs and agencies to work collaboratively to review students with a prior conviction on an individual basis since the specific conviction may not prevent the student from ultimately being licensed. While the BRN encourages alternative placement ultimately the program would need to follow their published policy regarding the options available to the student in this situation. (See the attached Criteria for Rehabilitation, CCR 1445.)

Question: Can the college or university request the Department of Justice to perform a criminal background check on their nursing students in order to meet clinical agency requirements for placement?

No. Only authorized agencies may request the Department of Justice to perform criminal background checks. The nursing program or the agency may utilize private companies that provide background checks for a fee. The Board does not require the use of such a service nor does it endorse any specific company.

Question: Should results of criminal background checks be placed in the student's academic file?

The self-disclosed student information and the results of a background check are confidential information. The nursing program must develop in consultation with their administration and clinical agencies a means to safeguard this information. It is recommended that the process, maintenance and security of student background checks should be described in the program's contract with those agencies requiring screening of nursing students and in policies provided to students and applicants.

Question: Do students need to have a background check done every time they go to a new clinical agency?

The Board encourages nursing programs to work collaboratively with other nursing programs in their geographical area to develop a standardized policy with all clinical agencies requiring background checks on nursing students. Since there is no state law or regulation that mandates background checks on nursing students, individual agency policy is the source of this requirement. Working collaboratively within a geographic area is probably the most efficient way to coordinate requirements in the least disruptive manner.

Question: Can a clinical agency refuse to allow a student to do a clinical course at their agency as a result of a prior conviction?

Yes. The Board would encourage the nursing program to work with the agency to clearly identify the types of prior convictions that would exclude a student from clinical rotation. The BRN suggests using CCR 1445 as a guide.

Question: Can a nursing program require students to meet clear background checks prior to admission or as a requirement for progression in the program?

Admission and progression policies are the purview of the program & the institution. The nursing program should seek guidance from their institutions legal counsel. The Board regulations require that all policies affecting students are written, available to students, and applicants.

Attachment:

TITLE 16, CALIFORNIA CODE OF REGULATIONS:

1445. Criteria for Rehabilitation

- (a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:
- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
 - (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.
 - (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
 - (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
 - (5) Evidence, if any, of rehabilitation submitted by the applicant.
- (b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:
- (1) Nature and severity of the act(s) or offense(s).
 - (2) Total criminal record.
 - (3) The time that has elapsed since commission of the act(s) or offense(s).
 - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, of rehabilitation submitted by the licensee.