

**REPORT OF THE  
JOINT COMMISSION ON HEALTH CARE**

**Background Checks for Medical Practitioners**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**REPORT DOCUMENT NO. 163**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2008**



**Code of Virginia § 30-168.**

The Joint Commission on Health Care (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to study, report and make recommendations on all areas of health care provision, regulation, insurance, liability, licensing, and delivery of services. In so doing, the Commission shall endeavor to ensure that the Commonwealth as provider, financier, and regulator adopts the most cost-effective and efficacious means of delivery of health care services so that the greatest number of Virginians receive quality health care. Further, the Commission shall encourage the development of uniform policies and services to ensure the availability of quality, affordable and accessible health services and provide a forum for continuing the review and study of programs and services.

The Commission may make recommendations and coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting the provision and delivery of health care.

For the purposes of this chapter, "health care" shall include behavioral health care.

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## Preface

House Bill 1944 introduced by Delegate Purkey during the 2007 General Assembly Session would have:

- Required criminal history background checks for all individuals seeking initial licenses to practice medicine, osteopathic medicine, chiropractic, or podiatry.
- Authorized the Board of Medicine (Board), at its discretion, to require background checks of individuals seeking to renew licenses.
- Set forth approximately 30 crimes that conviction of which would prevent the Board from granting or renewing a license.

H.B. 1944 was passed by in the Health, Welfare and Institutions Committee, where it was requested by letter that JCHC study the issue.

JCHC staff determined that under current Virginia law:

- There is no requirement that an individual undergo a criminal background check as a requirement for license renewal or continued competency.
- There is no barrier crime law that specifically prohibits a person who has committed certain crimes from practicing medicine.
- The clerk of court in “which conviction of a felony or adjudication of incompetence or incapacity was made, who has knowledge that a practitioner has been convicted or found to be incapacitated or incompetent,” shall have a duty to report these findings promptly to the Board” of Medicine.
  - The Board must suspend the license or certificate upon notice (*Code of Virginia* §54.1-2917).
  - According to staff at the Department of Health Professions, the practice of reporting such findings never occurs.

Five policy options were presented for consideration by JCHC, who approved the option to request by letter of the Chairman that the Executive Secretary of the Supreme Court of Virginia and the Compensation Board look into, and if necessary, address the extent to which clerks are adhering to the requirements of *Code of Virginia* §54.1-2917.

On behalf of the Joint Commission and staff, I would like to thank staff of the Virginia Department of Health Professions for their assistance with this study.

Kim Snead  
Executive Director  
June 2008



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October 26, 2007 Slide Presentation





# Background Checks for Medical Practitioners

## Executive Summary

### Authority for Study

In 2007, House Bill 1944 (introduced by Delegate Harry R. Purkey) was passed by in the Health Welfare and Institutions Committee, but was referred by letter to the Joint Commission on Health Care (JCHC) as a study. HB 1944, as introduced, would have:

- Required criminal history background checks for all individuals seeking initial licenses to practice medicine, osteopathic medicine, chiropractic, or podiatry.
- Authorized the Board of Medicine (Board), at its discretion, to require background checks of individuals seeking to renew licenses.
- Set forth approximately 30 crimes that conviction of which would prevent the Board from granting or renewing a license.

### Background

Under Virginia law, there is no requirement that an individual undergo a criminal background check before receiving a license to practice medicine. There is also no requirement that an individual undergo a criminal background check as a requirement for license renewal or continued competency. However, every licensee must apply for renewal of his license biennially, and furnish information, such as any convictions, to the Board.<sup>1</sup>

Additionally, there is no barrier crime law that specifically prohibits a person who has committed certain crimes from practicing medicine. The Virginia Board of Medicine *can* refuse to admit an individual for examination, refuse to issue a license or certificate, or suspend or revoke a license or certificate for certain unprofessional conduct, including, for example:

- Violating any statute or regulation “relating to the manufacture, distribution, dispensing or administration of drugs;”
- Being convicted in any jurisdiction of any felony, or of a misdemeanor involving moral turpitude; or,
- Having had a certificate or license revoked or suspended without having that certificate or license to practice reinstated in another jurisdiction.<sup>2</sup>

Hospitals must report disciplinary action to the Board.<sup>3</sup> Additionally, the clerk of court in “which conviction of a felony or adjudication of incompetence or incapacity was made, who has knowledge that a practitioner has been convicted

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<sup>1</sup> Code of Virginia §54.1-2904.

<sup>2</sup> Code of Virginia § 54.1-2915.

<sup>3</sup> Code of Virginia §54.1-2400.6.

or found to be incapacitated or incompetent,” shall have a duty to report these findings promptly to the Board” of Medicine.<sup>4</sup> Upon notice, the Board must suspend the license or certificate. However, according to staff at the Department of Health Professions (DHP), the practice of reporting such findings never occurs.

### **Medical School Policy**

Criminal background checks are becoming more common for many medical students as part of the application process and as a requirement for clinical clerkships. Hospitals or health systems where medical students take required or elective clinical rotations may require students to present evidence that a background check has been completed by their “home” medical school or may conduct their own background check. Additionally, Standard HR. 1.20 of the Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations) requires that criminal background checks be conducted on all categories of health care providers (including students and volunteers).

As of July 2006, the Veterans Administration (VA) hospitals will require all employees, including students and residents, to undergo a criminal background check. According to the Council on Medical Education, other hospitals and health systems are requiring background checks for students from their affiliated medical schools, but the extent to which this is occurring is unknown. There is no comprehensive information on the processes being used for background checks across hospital/health systems. A survey conducted by the Council on Medical Education during the 2004-2005 academic year found that of the 125 medical schools:

- 24 already required criminal background checks,
- 49 were planning to start in the near future, and
- 52 were not conducting or planning to start criminal background checks.

In February 2006, the Association of American Medical Colleges (AAMC) convened an Advisory Committee on Criminal Background Checks and endorsed the concept of a centralized system for background checks for applicants accepted to medical school.

### **Other States**

Twenty-eight states have the statutory authority to run criminal background checks as a condition of licensure. Most of the states that now require background checks instituted the requirement in recent years, so there is little information about the long-term benefits. Texas began checking backgrounds in

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<sup>4</sup> *Code of Virginia* §54.1-2917.

2005 and has found that they are time-consuming and are not revealing many problems. In Arizona, background checks are completed, but the findings are not necessarily used to disqualify someone from being licensed. Kentucky requires a criminal background check of all persons applying for initial licensure and at other times as requested by the Board when good cause is shown. Nevada requires all new medical doctor applicants to be fingerprinted. Additionally, if a formal complaint is filed on a currently licensed physician, he/she will be required to be fingerprinted.

### **Virginia Department of Health Professions Efforts**

To determine what has been missed by not completing background checks, DHP wanted to complete background checks on a random sample of physicians. However, since DHP would need probable cause to conduct a background check, DHP decided instead to check 280,000 licensees (of all types) against the Virginia Sex Offender Registry. Five licensees were found on the registry; four were licensed by the Board of Nursing and one was licensed by the Board of Social Work.<sup>5</sup> Both the Board of Nursing and the Board of Social Work have the discretion to suspend or revoke a license as a result of a felony conviction.<sup>6</sup> The four nursing licensees had disclosed their convictions.

### **Issues Related to Requiring Background Checks**

A number of issues would need to be considered if background checks were to be administered, including:

- What type of delay will it cause to require background checks prior to licensing?
- How much time, money and staff will be required to conduct background checks on potential licensees?
- What is the timing of the background check and the time period covered?
- What is the likelihood that multiple background checks will be required for an individual?
  - Accepted medical school applicants and enrolled students may be subject to multiple checks and duplicate charges already due to the differing requirements of medical schools, hospitals, and others.
  - Duplication is exacerbated by limitations on sharing information.

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<sup>5</sup>The Board of Nursing requires a licensee to renew his license every two years. As part of this process, a licensee will provide requested information, including convictions. *Code of Virginia* § 54.1-3011.

<sup>6</sup> *Code of Virginia* § 54.1-3007.

## Policy Options

**Option 1:** Take no action.

**Option 2:** Introduce legislation to amend the *Code of Virginia* to require all persons to undergo a criminal background check before being admitted to take the examination for licensure to practice medicine, osteopathic medicine, chiropractic, or podiatry.

**Option 3:** Introduce legislation to amend the *Code of Virginia* to require all persons upon application for a license to practice medicine, osteopathic medicine, chiropractic, or podiatry to undergo a criminal background check.

**Option 4:** Introduce legislation to amend the *Code of Virginia* to grant the Department of Health Professions the authority to conduct background checks on current and potential licensees in the practice of medicine, osteopathic medicine, chiropractic, or podiatry.

- This option would allow DHP to complete a random check to see what percentage of practitioners is likely to have background hits, if the requirement were put in place.
- This option would reinforce the requirement that practitioners report conviction and disciplinary action to the Board by reminding licensees that they are subject to being checked at the initial time of application and upon license renewal.

**Option 5:** By letter of the chairman request the Executive Secretary of the Supreme Court of Virginia to look into, and if necessary, address the extent to which clerks are adhering to the *Code of Virginia* §54.1-2917.

*No public comments were received regarding the policy options.*

### **JCHC Staff for this Report**

**Jaime H. Hoyle**

**Senior Staff Attorney/Health Policy Analyst**



Virginia Joint Commission  
on Health Care



## Staff Report: Background Checks for Medical Practitioners

H.B. 1944 (2007)(Patron: Delegate Purkey)

Jaime H. Hoyle  
Sr. Staff Attorney/Health Policy Analyst  
October 26, 2007



### Authority for the Study

- ▶ H.B. 1944 (2007) would:
  - ▶ Require criminal history background checks for all individuals seeking initial licenses to practice medicine, osteopathic medicine, chiropractic, or podiatry.
  - ▶ Authorize the Board of Medicine (Board), at its discretion, to require background checks of individuals seeking to renew licenses.
  - ▶ Set forth approximately 30 crimes that conviction of which would prevent the Board from granting or renewing a license.
  
- ▶ H.B. 1944 was passed by in HWI, where it was requested by letter that JCHC study the issue.



## Current Virginia Law

- ▶ Under Virginia law, there is no requirement that an individual undergo a criminal background check before receiving a license to practice medicine.
- ▶ There is no requirement that an individual undergo a criminal background check as a requirement for license renewal or continued competency.
  - ▶ Every licensee must apply for renewal of his license biennially, and furnish information, such as any convictions, to the Board. (*Code of Virginia* §54.1-2904).
- ▶ Additionally, there is no barrier crime law that specifically prohibits a person who has committed certain crimes from practicing medicine.

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## Current Virginia Law (Cont.)

- ▶ The Virginia Board of Medicine *can* refuse to admit an individual for examination, refuse to issue a license or certificate, or suspend or revoke a license or certificate for certain unprofessional conduct, including, for example:
  - ▶ Violating any statute or regulation “relating to the manufacture, distribution, dispensing or administration of drugs;”
  - ▶ Being convicted in any jurisdiction of any felony, or of a misdemeanor involving moral turpitude; or,
  - ▶ Having had a certificate or license revoked or suspended without having that certificate or license to practice reinstated in another jurisdiction. (*Code of Virginia* § 54.1-2915)

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## Current Virginia Law (Cont.)

- ▶ The clerk of court in “which conviction of a felony or adjudication of incompetence or incapacity was made, who has knowledge that a practitioner has been convicted or found to be incapacitated or incompetent,” shall have a duty to report these findings promptly to the Board” of Medicine.
  - ▶ The Board must suspend the license or certificate upon notice. (*Code of Virginia* §54.1-2917)
  - ▶ According to staff at the Department of Health Professions, the practice of reporting such findings never occurs.
  
- ▶ Hospitals must report disciplinary action to the Board, as well. (*Code of Virginia* §54.1-2400.6)

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## Medical School Policy

- ▶ Criminal background checks are becoming more common for many medical students as part of the application process and as a requirement for clinical clerkships.
  
- ▶ The policy behind the implementation of background checks is:
  - ▶ To reinforce the public’s trust in the medical profession,
  - ▶ To protect the safety and well-being of patients and the ability of medical students to become licensed physicians, and
  - ▶ To address liability issues affecting medical schools and their affiliated clinical facilities.

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## Medical School Policy (Cont.)

- ▶ Standard HR. 1.20 of the Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations) requires that criminal background checks be conducted on all categories of health care providers (including students and volunteers).
  - ▶ In the absence of state law, organizations may develop their own policies.
  - ▶ Hospitals or health systems where medical students take required or elective clinical rotations may require students to present evidence that a background check has been completed by their “home” medical school or may conduct their own background check.

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## Medical School Policy (Cont.)

- ▶ As of July 2006, the Veterans Administration (VA) hospitals will require all employees, including students and residents, to undergo a criminal background check.
- ▶ According to the Council on Medical Education, other hospitals and health systems are requiring background checks for students from their affiliated medical schools, but the extent to which this is occurring is unknown.
  - ▶ There is no comprehensive information on the processes being used for background checks across hospital/health systems.

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## Medical School Policy (Cont.)

- ▶ A survey conducted by the Council on Medical Education during the 2004-2005 academic year found that of the 125 medical schools:
  - ▶ 24 already required criminal background checks,
  - ▶ 49 were planning to start in the near future, and
  - ▶ 52 were not conducting or planning to start criminal background checks.
  
- ▶ In February 2006, the Association of American Medical Colleges (AAMC) convened an Advisory Committee on Criminal Background Checks and endorsed the concept of a centralized system for background checks for applicants accepted to medical school.



## Other States

- ▶ 28 states have the statutory authority to run criminal background checks as a condition of licensure.
  - ▶ 4 of these require state-only background checks.
  
- ▶ 22 states do not have such authority.
  
- ▶ Most of the states that now require background checks instituted the requirement in recent years, so there is little information about the long-term benefits.



## Other States (Cont.)

- ▶ Texas started checking backgrounds in 2005 and has found that they are time-consuming and are not revealing many problems.
- ▶ In Arizona, background checks are completed, but the findings are not necessarily used to disqualify someone from being licensed.
- ▶ Kentucky requires a criminal background check of all persons applying for initial licensure and at other times as requested by the the Board when good cause is shown.
- ▶ Nevada requires all new medical doctor applicants to be fingerprinted. Additionally, if a formal complaint is filed on a currently licensed physician, he/she will be required to be fingerprinted.

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## Other States (Cont.)

- ▶ Virginia participates in an interstate nursing compact that allows Virginia to accept nursing licenses from participating states and those states accept Virginia licenses. The interstate compact is pushing for the participating states to complete background checks.

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## Virginia Department Of Health Professions Efforts

- ▶ The Virginia Department of Health Professions (DHP) did some preliminary research on this study. To determine what has been missed by not completing checks, DHP wanted to complete background checks on a random sample of physicians.
  - ▶ However, since DHP would need probable cause to conduct a background check, DHP checked its 280,000 licensees (of all types) against the Virginia Sex Offender Registry.
    - ▶ They had 5 hits: 4 licensed by the Board of Nursing and 1 licensed by the Board of Social Work.
    - ▶ All 4 nursing licensees had disclosed their convictions.

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## Issues Related to Requiring Background Checks

- ▶ What type of delay will it cause to require background checks prior to licensing.
- ▶ How much time, money and staff will be required to conduct background checks on potential licensees.
- ▶ The timing of the background check and the time period covered.
- ▶ Possibility of multiple background checks.
  - ▶ Accepted medical school applicants and enrolled students may now be subject to multiple checks and duplicate charges due to the differing requirements of medical schools, hospitals, and others.
  - ▶ Duplication is exacerbated by limitations on sharing information.

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## Policy Options

- ▶ **Option 1:** Take no action.
  
- ▶ **Option 2:** Introduce legislation to amend the *Code of Virginia* to require all persons to undergo a criminal background check before being admitted to take the examination for licensure to practice medicine, osteopathic medicine, chiropractic, or podiatry.



## Policy Options (Cont.)

- ▶ **Option 3:** Introduce legislation to amend the *Code of Virginia* to require all persons upon application for a license to practice medicine, osteopathic medicine, chiropractic, or podiatry to undergo a criminal background check.
  
- ▶ **Option 4:** Introduce legislation to amend the *Code of Virginia* to grant the Department of Health Professions the authority to conduct background checks on current and potential licensees in the practice of medicine, osteopathic medicine, chiropractic, or podiatry.
  - ▶ This option would allow DHP to complete a random check to see what percentage of practitioners is likely to have background hits if the requirement were put in place.
  - ▶ This option would reinforce the requirement that practitioners report conviction and disciplinary action to the Board by reminding licensees that they are subject to being checked at the initial time of application and upon license renewal.



## Policy Options (Cont.)

- ▶ **Option 5:** By letter of the chairman request the Executive Secretary of the Supreme Court of Virginia to look into, and if necessary, address the extent to which clerks are adhering to the *Code of Virginia* §54.1-2917.



## Public Comments

- ▶ Written public comments on the proposed options may be submitted to JCHC by close of business on November 5, 2007. However, to ensure inclusion in the draft document being sent to JCHC members prior to the meeting, please submit comments to JCHC by close of business on November 1, 2007. Comments may be submitted via:
  - ▶ E-mail ([sareid@leg.state.va.us](mailto:sareid@leg.state.va.us))
  - ▶ Facsimile (804/786-5538) or
  - ▶ Mail to Joint Commission on Health Care  
P.O. Box 1322  
Richmond, Virginia 23218
- ▶ Comments will be summarized and presented to JCHC during its November 8th meeting.



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