

American Physical Therapy Association

## **Criminal Background Check Report for Physical Therapist Education Programs**

---

*January 2010*

This report was adapted for the physical therapist education community from a November 2006 Report of the American Association of Colleges of Pharmacy (AACP) Criminal Background Check Advisory Panel. The original AACP report is available online at <http://www.aacp.org/resources/academicpolicies/admissionguidelines/Documents/AACPBackgroundCheckRpt.pdf>. The Executive Vice President and CEO of AACP, Lucinda L. Maine, PhD, RPh, issued explicit permission to APTA to modify the original report for use by physical therapist educators. Members of the original AACP Criminal Background Check Advisory Panel were Holly Anderson (Nova Southeastern University), Mary Ann Kirkpatrick (Shenandoah University), Michael McKenzie (University of Florida), Mark Moore (Campbell University), Karl Williams (St John's University), William Wuller (Southern Illinois University Edwardsville), Eleni Anagnostiadis (National Association of Boards of Pharmacy), and Libby Ross (formerly of AACP).

### **Disclaimer**

All information contained in this paper is for informational purposes only and is not intended to serve as legal advice. Institutional, state legislature, state board, and experiential site requirements vary widely and may evolve over time. Individuals with questions or a situation requiring advice should contact an attorney or appropriate expert.

### **Staff Contact:**

Libby J. Ross, MA  
Director, Academic Program Services  
American Physical Therapy Association  
[libbyross@apta.org](mailto:libbyross@apta.org)  
800/999-2782, ext 3326

## Contents

<b>EXECUTIVE SUMMARY</b> .....	4
INTRODUCTION.....	5
ROLE OF BACKGROUND CHECKS IN PHYSICAL THERAPY.....	6
Program Accreditation.....	6
The Joint Commission.....	6
Physical Therapist Licensure Requirements.....	7
TYPES OF BACKGROUND CHECKS .....	7
National Level.....	8
State Level.....	9
County Level.....	9
Federal Bureau of Investigations.....	9
SPECIAL CONSIDERATIONS .....	10
HCA.....	10
International Students .....	11
USE OF BACKGROUND CHECKS IN ADMISSIONS .....	11
Application and Instructions .....	12
PTCAS.....	12
State Laws.....	13
Accepted Applicants Only .....	14
Revocation of Acceptance Offer.....	14
INSTITUTIONAL BACKGROUND CHECK POLICIES.....	15
BACKGROUND CHECK RESULTS .....	18
Results Sent to Program .....	18
Results Sent to Clinical Education Site .....	19
Evaluation Criteria .....	19
Institution-defined List of Serious Offenses.....	20
Types of Records .....	22
Minor Traffic Violations .....	22
Arrest Records.....	23
Misdemeanors .....	23
Juvenile Records .....	23
Expunged Records .....	23
Errors in Reporting .....	23
Appeals Process.....	24
Implications for Minority Students .....	24
MANAGING BACKGROUND CHECK RESULTS .....	25

Confidentiality and Recordkeeping .....25  
Disclosure of Results.....25  
Experiential Sites.....26  
Financial Aid Officers .....26  
Campus Police / Security .....26  
Substance Abuse Counselors and Residence Life .....27  
State Police .....27  
State Boards of Physical Therapy .....27  
APPENDIX: APTA CRIMINAL BACKGROUND CHECK SURVEY RESULTS FOR PHYSICAL  
THERAPIST EDUCATION PROGRAMS .....28

## **EXECUTIVE SUMMARY**

The majority of physical therapist (PT) education programs require students to complete a criminal background at least once due to institutional, experiential education, or state licensure requirements. The Commission on Accreditation in Physical Therapy Education (CAPTE), the Joint Commission (formerly known as JCAHO), and the Federation of State Boards of Physical Therapy (FSBPT) do not mandate the use of background checks; however, an increasing number of organizations accredited or affiliated with these agencies require them.

A defensible criminal background search process must comprise multiple types of checks. The results generated by a single type of check, including those offered by the FBI and state police, may not reflect an updated or comprehensive account of all criminal offenses.

The PTCAS application and applications for most PT education programs include questions relative to past criminal offenses. PT education programs should research state laws to determine what information may be requested on the local PT program application and any limitations on the use of that data in the admissions process. Other health profession associations recommend that institutions only conduct criminal background checks on accepted applicants so that the results are not a factor in the initial admission decision process. If an applicant does not fully disclose a past offense that is revealed on a background check report, a PT education program may decide to revoke the applicant's offer of admission.

Institutional background check policies for PT students may describe the purpose of the check, applicability to different student types, types of checks required, timeline for submission, frequency or number of checks required, committee review criteria, student's rights, confidentiality of results, and payment process. In addition, programs may include language from the Fair Credit Reporting Act and a disclaimer indicating that a criminal background check process does not guarantee safety or predict the individual's future behavior.

Programs may choose to compile a list of offenses that automatically disqualify an individual from enrolling the program or to use a more holistic approach that allows them to evaluate each offense on a case-by-case basis. Legal classification of offenses, including minor traffic violations, varies by state and jurisdiction. Programs should take both the type of offense and its classification into consideration during a review process. The program should also consider the role that race and ethnicity plays in the judicial system and in the program's local review process. The program's actions in response to a criminal record must not be deemed unreasonable, arbitrary, or capricious.

Background check results may be submitted directly to the PT education program or the clinical education site. These results should be stored separately from academic records and be accessible only to a limited number of authorized individuals in order to comply with the Family Educational Rights and Privacy Act (FERPA). Financial aid offices, substance abuse counselors, resident life officers, and state boards of physical therapy are not generally authorized to access criminal reports without the individual's explicit consent. Programs may encourage or mandate that affiliated clinical education sites maintain the results in a way that complies with FERPA.

## INTRODUCTION

This report introduces physical therapist (PT) education programs to the important issues regarding access to, and use of, criminal records with physical therapist applicants and students. A growing number of national health care organizations, institutions, and state legislatures require health profession students to complete a criminal background check (CBC) at least once during their educational career. PT students may be subject to criminal background checks earlier in their educational career and more often than medical school or other health profession students due to the use of experiential educational experiences at the beginning versus the end of the didactic program.

Background checks are commonly required for hospital staff, as well as individuals, such as teachers, coaches, child care providers, social workers, and home health care providers, who work or volunteer with children or other vulnerable populations.<sup>1</sup> Facilities requiring PT students to complete a CBC include long-term care facilities, outpatient clinics, and hospitals. A background search may use a myriad of resources to verify or report one or more of the following: social security number, employment history, credit history, education, professional licensure, criminal history, civil lawsuits, and motor vehicle records.<sup>2</sup>

As many as 1 out of 7 Americans have some form of criminal record<sup>3</sup> and as many as 40 percent of all job applications and resumes include some false or altered information.<sup>4</sup> These trends may result in an increase in the number of applicants who apply to PT education programs with a criminal history or an increase in the use of background checks in order to confirm self-reported information.<sup>5</sup>

There are reasons a criminal background check may be advantageous to students, institutions, and patients. The Association of American Medical Colleges (AAMC) Criminal Background Check Advisory Committee identified four reasons it is necessary for applicants accepted into medical school to undergo a criminal background check. These reasons could also be applied to physical therapist education programs and other health profession institutions:

- To bolster the public's continuing trust in the [physical therapy] profession
- To enhance the safety and well-being of patients
- To ascertain the ability of accepted applicants and enrolled [physical therapy] students to eventually become licensed as [physical therapists], and

---

<sup>1</sup> Using criminal background checks to inform licensure decision making. Washington, D.C.: National Council of State Boards of Nursing Delegate Assembly. 2005. [https://www.ncsbn.org/2005\\_Section\\_II\\_forweb.pdf](https://www.ncsbn.org/2005_Section_II_forweb.pdf). Accessed September 30, 2009.

<sup>2</sup> Alley NM, Marrs J, Schreiner B. Nurses' promise to safeguard the public: is it time for nationally mandated background checks. *JONA's Healthcare, Law, Ethics, and Regulation*. 2005;7:119.

<sup>3</sup> Yuska G. Expungement: The answer to an employment background check in this era of heightened security. Stark & Stark. FindLaw.com. June 5, 2003. <http://library.findlaw.com/2003/Jun/5/132788.html>. Accessed October 28, 2009.

<sup>4</sup> Avard M. Use caution when performing background checks. *San Antonio Business Journal*. October 9, 2007. <http://philadelphia.bizjournals.com/sanantonio/stories/2007/10/22/focus2.html?q=criminal>. Accessed October 2, 2009.

<sup>5</sup> Dickerson D. Background checks in the university admissions process: an overview of legal and policy considerations. *Journal of College and University Law*. 2003; 34:2. <http://ssrn.com/abstract=1117797>. Accessed September 30, 2009.

- To minimize the liability of [physical therapist programs] and their affiliated clinical facilities.<sup>6</sup>

## ROLE OF BACKGROUND CHECKS IN PHYSICAL THERAPY

PT education programs may require criminal background checks for students in response to external pressures. Eighty-four percent of PT programs require PT students to complete a criminal background at least once while enrolled. APTA does not encourage or discourage the use of criminal background checks for PT or physical therapist assistant (PTA) students; but recognizes that legal, legislative, and organizational demands may force some institutions to adopt a background check process (Appendix).

### Program Accreditation

The Commission on Accreditation in Physical Therapy Education (CAPTE) does not require or recommend that PT education programs use background checks. Programs are only required to inform students on the “potential for other clinical education requirements, such as drug testing and criminal background checks.” If a state regulation requires a PT education program to conduct a background check on students, the program must comply in order to fulfill CAPTE requirements.<sup>7</sup>

Similarly, the Accreditation Council for Pharmacy Education (ACPE) requires pharmacy colleges and schools to identify any criminal activities that would or might prevent a student from completing the degree program or obtaining a pharmacy license. ACPE also mandates that pharmacy institutions publish related background check policies and procedures, and disclose “... the potential adverse consequences resulting from these disclosures or background checks.”<sup>8</sup>

Accreditation agencies for other health professions are generally silent on the issue of background checks within the educational program, including the Liaison Committee on Medical Education (LCME), the Commission on Dental Accreditation (CODA), the Accreditation Council on Optometric Education (ACOE), and the Council on Education for Public Health (CEPH).

### The Joint Commission

The Joint Commission, formerly the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), does not require accredited organizations to conduct criminal background checks. If a health care organization chooses to require a record search, then it must be in compliance with state and organizational policies to become or remain accredited. The Joint Commission states, “In the absence of a state law on criminal background checks, each organization can develop its own expectations ...” and can “elect to screen employees and not students/volunteers.” Organizations may erroneously interpret this standard to mean that checks are required for accreditation and implement a record search requirement for all employees, volunteers, and students using the same set of policies, regardless of their applicability to a particular group. As a result, a growing number of PT education programs are confronting criminal background check requirements for those students assigned to a clinical facility for education and training. Experiential learning sites do not comply uniformly with the laws and regulations governing criminal background checks. PT education programs entering into agreements with

---

<sup>6</sup> Report of the AAMC Criminal Background Check Advisory Committee. Association of American Medical Colleges. 2006. [http://www.aamc.org/members/gsa/cbc\\_final\\_report.pdf](http://www.aamc.org/members/gsa/cbc_final_report.pdf). Accessed September 12, 2009.

<sup>7</sup> Evaluative Criteria for Accreditation of Education Programs for the Preparation of Physical Therapists. Commission on Accreditation in Physical Therapy Education (CAPTE). October 26, 2004. [http://www.apta.org/AM/Template.cfm?Section=PT\\_Programs3&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=62414](http://www.apta.org/AM/Template.cfm?Section=PT_Programs3&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=62414). Accessed September 15, 2009.

<sup>8</sup> Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree. Accreditation Council for Pharmacy Education (ACPE). July 2007. [http://www.acpe-accredit.org/pdf/ACPE\\_Revised\\_PharmD\\_Standards\\_Adopted\\_Jan152006.pdf](http://www.acpe-accredit.org/pdf/ACPE_Revised_PharmD_Standards_Adopted_Jan152006.pdf). Accessed October 4, 2009.

experiential learning sites must cope with different types of record search and drug testing requirements.<sup>9</sup>

## Physical Therapist Licensure Requirements

The Federation of State Boards of Physical Therapy (FSBPT) has no recommendations pertaining to the use of criminal background checks or drug tests in the licensure application or renewal process, according to Mark Lane, vice president of professional standards and assessment. A 2009 FSBPT report indicates that 12 state licensure boards of physical therapy require a criminal record check as part of the licensure application process: California, Kentucky, Maine, Michigan, Montana, Nevada, New Jersey, Oklahoma, Oregon, Tennessee, Utah, and Washington. States may license a candidate prior to receiving a background report and make the PT license contingent on the report results. Other state boards of physical therapy are not willing to implement a check process due to the time it can take to retrieve results or other reasons. No states currently require physical therapist candidates to submit to a drug test for initial licensure.<sup>10</sup>

Each state board may develop its own policies and procedures related to use and evaluation of background checks. In evaluating disclosures and background reports, a state board may take into consideration mitigating circumstances, the potential for harm to the public, or the potential for reoccurrence. John M. Silverstein, attorney for the North Carolina Board of Physical Therapy Examiners, stated that candidates who disclose prior criminal conduct with complete explanations of how their character has been rehabilitated since the conduct occurred are more likely to be approved for licensure in North Carolina than those who fail to disclose relevant information on the application. State board policies vary.<sup>11</sup>

If a criminal conviction is disclosed by a physical therapist or uncovered as a result of a background check, the individual may be subject to disciplinary action by a state board. FSBPT developed a resource document, known as the "Basis for Disciplinary Action Definitions and Descriptions," to help PT regulatory bodies to categorize disciplinary actions using standardized terminology. These actions are reported to the Licensure and Disciplinary Database (FSBPT LDB), a system that alerts other jurisdictions if a physical therapist with multiple licenses is disciplined in one of those jurisdictions. PT licensure candidates who fail to accurately disclose a prior criminal conviction, as required by a state board, are categorized as code "E4 - Fraud, Deceit or Material Omission in Obtaining License or Credentials." FSBPT instructs users to "use this [code] when a prospective licensee who actually obtains a license fails to report a criminal conviction or otherwise lies or does not disclose information." The LDB includes other codes related to criminal offenses and misconduct.<sup>12</sup>

## TYPES OF BACKGROUND CHECKS

Commercial background check firms can access only three original sources of criminal history:

<sup>9</sup> Requirement for Criminal Background Checks. Joint Commission on Accreditation of Healthcare Organizations (JCAHO). November 24, 2008. [http://www.jointcommission.org/AccreditationPrograms/LongTermCare/Standards/09\\_FAQs/HR/requirements\\_for\\_criminal.htm](http://www.jointcommission.org/AccreditationPrograms/LongTermCare/Standards/09_FAQs/HR/requirements_for_criminal.htm). Accessed October 5, 2009.

<sup>10</sup> Criminal Background Checks Overview by State Report. Federation of State Boards of Physical Therapy (FSBPT). May 11, 2009. [http://www.fsmb.org/pdf/grpol\\_criminal\\_background\\_checks.pdf](http://www.fsmb.org/pdf/grpol_criminal_background_checks.pdf). Accessed August 13, 2009.

<sup>11</sup> Silverstein JM. Crime doesn't pay. *Federation Forum Magazine*. 2006;11:3.

[https://www.fsbpt.org/download/Forum\\_Vol21\\_No3.pdf](https://www.fsbpt.org/download/Forum_Vol21_No3.pdf). Accessed August 15, 2009.

<sup>12</sup> Basis for Disciplinary Action Definitions and Descriptions: A Tool to Assist Physical Therapy Regulatory Bodies Categorize the Basis for Disciplinary Action. Federation of State Boards of Physical Therapy. December 1, 2008. [https://www.fsbpt.org/download/BasisForDisciplinaryActionDefinitions\\_V1.pdf](https://www.fsbpt.org/download/BasisForDisciplinaryActionDefinitions_V1.pdf). Accessed October 10, 2009.

- Court records containing local, state, or federal records containing incidents of arraignment, trial, and disposition of case
- Law enforcement agency records containing incidents of complaint, investigation, arrest, and indictment
- Corrections agency records containing information about probation, parole, and incarceration<sup>13</sup>

To obtain these records, commercial background check companies must visit the courts or government offices; contact the office via email, mail, or phone; or remotely access the official online database of the office. Not all public records are available online, or they may contain no personal identifying information. Therefore, search firms must often visit one or more of the 3,100+ county court offices in person in order to access their records. PT education programs should not use a commercial vendor that relies solely on online databases for record searches.

Some programs use state police agencies to conduct criminal background checks. State police agencies have access to private government databases that are not open to commercial firms, but they may be limited to offenses in the state and the National Crime Information Center (NCIC) database. Also, state police may not verify past residencies, and criminal offenses in other states may be omitted from an individual's record.<sup>14</sup>

### National Level

A defensible criminal background search process must comprise multiple types of checks. A national criminal history database is not available to the public or private data firms. Instead, search firms use or create proprietary databases by retrieving information from county, state, and federal repositories.

Some firms use a privately owned national service, known as the National Criminal File (NCF), which includes approximately 133 million records. Critics claim that the NCF contains minimal information from state repositories and county criminal courts, the data is not updated frequently, and it often lacks personal identifiers (eg, date of birth) beyond name needed for identity verification.<sup>15</sup>

There are numerous reasons why any nationwide criminal record databases are not yet reliable or comprehensive. In some states, the counties report their data to a state law enforcement agency, such as the Texas' Department of Public Safety. In other cases, as in California, counties sell their data individually to private firms. Other counties refuse to sell the data entirely or participate in their state repository systems that feed information into the national databases. Some states only provide parole and probation information (state prison records) to national databases and omit county court records. The frequency with which states report data to national databases varies significantly by state. National criminal databases also do not include federal or sexual offender convictions. Conversely, a national check may reveal a criminal offense committed outside the individual's county or state of residency.<sup>16</sup>

---

<sup>13</sup> Ernst CR, Rosen R. National Criminal History Databases: Issues and Opportunities in Pre-employment Screen. Tempe, AZ: BRB Publications Inc. November 26, 2002. <http://www.brpub.com/articles/CriminalHistoryDB.pdf>. Accessed September 12, 2009.

<sup>14</sup> Survey of State Criminal History Information Systems, Bureau of Justice Statistics. 2006. <http://www.ncjrs.gov/pdffiles1/bjs/grants/224889.pdf>. Accessed September 15, 2009.

<sup>15</sup> Walters. J. National criminal background checks: myths, realities and resources. *Law Library Lights*. 2007;50:3. [http://www.virtualchase.com/articles/criminal\\_checks\\_national.html](http://www.virtualchase.com/articles/criminal_checks_national.html). Accessed November 1, 2009.

<sup>16</sup> Sullivan B. Criminal Background Checks Incomplete: How Convicted Felons Can Slip Through Safety Net. MSNBC: Technology and Science. April 12, 2005. Available at: <http://www.msnbc.msn.com/id/7467732/>. Accessed October 5, 2009.

## State Level

State-based repositories of criminal records have similar limitations to the national databases. These databases may not report all criminal convictions within the state and do not include federal court records. Each county is instructed to send records to the state on a scheduled basis. Some counties comply with state reporting requirements, while other counties send records to the state on a delayed or sporadic basis, and some counties do not send any information to the state. The records may not provide adequate detail about the offense or subsequent information, such as a pardon.

According to the U.S. Department of Justice, Bureau of Justice, 24 states representing 51 percent of the individual offenders in the nation's criminal history records, report that 40 percent of arrests within the past 5 years in the criminal history database do not have final dispositions (court decisions) recorded. Twenty-four states also reported a backlog of entering court disposition data into the state criminal history database. The length of time between occurrence of the final felony court disposition and its receipt by the repository ranged from 1 hour or less in New Jersey and New York to 180 days in West Virginia and Kentucky. Due to the lag time in reporting from the county to the state level, more recent offenses may be missed if only a state record search is conducted. Therefore, a statewide record check alone may result in an incomplete or inaccurate criminal history.<sup>17</sup>

## County Level

Counties are generally selected based on the individual's residence history, work history and institutional enrollment. Case details may include offense, pleading or finding, disposition, and docket number. Researchers may access county criminal record searches via "walk-in" searches or external databases. Some county records are only available via on-site searches. County checks are widely regarded as the most accurate; however, they only provide a record of incidents for that particular county. If students do not provide a complete residency history or if they have records outside their place of residency, then the county search may not reveal all past offenses. A county search done in conjunction with a state, national and federal court search is more likely to reveal a criminal history.<sup>18</sup>

## Federal Bureau of Investigations

Following the events of September 11, a greater number of employers conducted criminal background checks on employees. Companies and institutions may require students to go through the Federal Bureau of Investigations (FBI) to obtain a more complete criminal record.

The FBI search includes the National Crime Information Center (NCIC). NCIC is a central database for tracking crime-related information maintained by the FBI's Criminal Justice Information Services Division (CJIS). Most data is received from federal, state, and local law enforcement agencies, as well as tribal law enforcement agencies and non-law enforcement agencies, such as state and federal motor vehicle registration and licensing authorities. The data is only available to government agencies, such as the state police and Veteran Affairs (VA) hospitals. NCIC is not open to privately owned research firms.<sup>19</sup>

Although FBI checks are generally considered more reliable than privately managed checks, the FBI files are not comprehensive and can take up to 8 weeks to process. Some police departments do not

---

<sup>17</sup> Survey of State Criminal History Information Systems. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. 2006. Available at: <http://www.ncjrs.gov/pdffiles1/bjs/grants/224889.pdf>. Accessed October 4, 2009.

<sup>18</sup> Sullivan, *supra* note 16.

<sup>19</sup> Federal Bureau of Investigation, Criminal Justice Services Information System, National Crime Information Center. Available at: <http://www.fbi.gov/hq/cjis/ncic.htm>. Accessed September 20, 2009.

report to the FBI. The FBI database relies on state repositories, which may not be comprehensive or current, and may not contain misdemeanor data.<sup>20</sup>

## SPECIAL CONSIDERATIONS

PT education programs and other health profession institutions may need to take into account information that has unique implications for the health care industry and health profession students. These issues may be less relevant to employers or programs in other industries.

### HCA

Effective July 2009, the Hospital Corporation of America (HCA) defined three levels of criminal background checks. The three levels include all offenses extending over a 7-year history. The types of checks included in a Level I, II, and III check may vary among HCA sites, as well as among other health care organizations that use the same terminology. Some health profession institutions, such as Nova Southeastern University Health Professions Division, have adopted this terminology in local policies.<sup>21</sup>

#### Level I

A Level I search includes the following:

- Social Security Number verification (non-employee student SSN's will not be verifiable with the Social Security Administration)
- Criminal search (7 years or up to 5 criminal searches)
- Employment verification to include reason for separation and eligibility for re-employment for each employer for 7 years\*
- Violent Sexual Offender and Predator Registry search
- OIG List of Excluded Individuals/Entities
- GSA List of Parties Excluded From Federal Programs
- U.S. Treasury, Office of Foreign Assets Control (OFAC), list of Specially Designated Nationals (SDN), and
- Applicable state exclusion list on Atlas (HCA's Intranet site).

*\* This element of the Level I investigation is NOT required for students younger than 21 years of age.*

#### Level II

In addition to Level I search, a Level II search includes the following:

- Education verification (highest level)
- Professional license verification
- Certification and designations check
- Professional disciplinary action search
- Department of Motor Vehicle driving history, based on responsibilities, and
- Consumer credit report, based on responsibilities.

#### Level III

In addition to Levels I and II searches, a Level III search includes the following:

- Newspaper articles and clippings, and
- Bankruptcy and Federal District Court search.

---

<sup>20</sup> Scalet SD. Good (and Bad) Background Checks. *CSO Magazine*. August 2004. Available at: [http://www.csoonline.com/article/219483/Good\\_and\\_Bad\\_Background\\_Checks](http://www.csoonline.com/article/219483/Good_and_Bad_Background_Checks). Accessed October 15, 2009.

<sup>21</sup> Authorization, Disclosure & Release Form by Accepted Applicant/Enrolled Student for Background Check. Nova Southeastern University Health Professions Division. Available at: <http://pharmacy.nova.edu/NewWebsite/StudentAffairs/Documents/Orientation/ExhibitAAuthorizationReleaseForm4-22-051.pdf>. Accessed October 10, 2009.

HCA also developed policy related to students on clinical rotations:

“School Affiliation Agreements should include language consistent with this policy as a requirement for student clinical rotation in affiliated facilities. The cost of the background investigation may be negotiated between the Affiliated Employer and the school. If a school should refuse to assume responsibility either for obtaining or paying for background investigations, the facility must make other arrangements for obtaining and paying for the background investigations prior to the start of student clinical rotation in an affiliated facility. Students who are not serving in a clinical rotation and will not be in the facility on a recurring basis (eg, one-day job shadow by a high school student), should be treated like a visitor to the facility. All privacy and safety requirements of visitors must be met.”<sup>22</sup>

## International Students

A PT education program may provide criminal background check policy information for students enrolled under F-1 or J-1 visas. The U.S. Department of State visa application process includes a background check process. The FBI conducts up to two background checks on student visa applications: the Mantis and Condor.<sup>23</sup>

Visa applicants who work in an occupation on the “Technology Alert List” may be subject to the Mantis background check. The Technology Alert List identifies fields of study or work that could be used against the U.S. in an act of terrorism, or transferred to rogue nations. The Mantis search focuses on individuals from specific nationalities more than others, and the consulate decides whether to order one or both checks. For instance, a biomedical engineer from a “friendly” country such as France is less likely to be subject to a Mantis search than a Syrian national in the same field.

The state department added another background check called the “List of 27” security check, also known as Condor. It is performed on males between the ages of 17 and 60 from certain countries including Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, possibly Turkey, United Arab Emirates, and Yemen.

If the student has lived in the United States for any period of time, a PT education program may require the applicant to undergo a U.S. background check process in addition to the checks performed during the visa application process. If the student has only lived outside the U.S., the institution must decide whether the visa application will likely satisfy the criminal background check requirements for the experiential sites and institution.<sup>24</sup>

## USE OF BACKGROUND CHECKS IN ADMISSIONS

Programs may require applicants who apply to the PT education program to self-report any criminal offenses or submit a background check during the admissions process. This section describes the factors a program may consider in the development of policies and procedures. Additional guidance is

---

<sup>22</sup> HCA Policies and Procedures HR.OP.002 (formerly HR.102) Background Investigations. Hospital Corporation of America. November 1, 2009. <http://ec.hcahealthcare.com/CustomPage.asp?PageName=PHR>. Accessed November 4, 2009.

<sup>23</sup> Deciphering the Visa Code: A Look at the Basic U.S. Visa Process. U.S. Department of State. 2005. <http://www.america.gov/st/diversity-english/2008/April/20080530130024xjsnommis3.246707e-02.html>. Accessed September 30, 2009.

<sup>24</sup> Security Checks for Nonimmigrant Visa Processing. Peng and Weber: U.S. Immigration Lawyers. [http://www.pengweber.com/answers\\_for/VisaProcessing/visasecuritychecks.html](http://www.pengweber.com/answers_for/VisaProcessing/visasecuritychecks.html). Accessed October 10, 2009.

available in the 2008 “Background Checks in the University Admissions Process: An Overview of Legal and Policy Considerations” report by Darby Dickerson, Dean of Stetson University College of Law.<sup>25</sup>

### Application and Instructions

Applications to PT education programs commonly include questions regarding felony convictions. If the institution’s legal counsel approves and the state legislature permits it, programs may choose to ask questions related to misdemeanors and arrests on a PT program or graduate school application. The application instructions should indicate the types of records the applicant must disclose. These may include the following:

- a plea of “no contest” or “nolo contendere”
- a juvenile offense
- an offense for which records have since been expunged
- a conviction the applicant is currently appealing
- an offense for which applicant was arrested but not charged
- an offense for which the applicant was arrested and charged but the charges were dropped
- an offense for which the applicant was arrested and charged but found not guilty by a judge or jury
- arrested, found guilty by a judge or jury but the conviction was overturned on appeal
- an executive pardon

The institution may want to request additional information as part of the application, such as the terms or conditions of any plea, penalty, punishment, sentence, probation or parole; details regarding the offense; and the applicant’s reflections on the experience.<sup>26</sup>

### PTCAS

The Physical Therapist Centralized Application Service (PTCAS) allows applicants to use a single application to apply to multiple PT education programs. The PTCAS application form includes a required field related to felony convictions. PTCAS cannot include questions about misdemeanors, arrests, or other criminal records in the admissions process due to restrictions in state law and institutional policies.

Of the more than 12,000 individuals who applied through PTCAS during the 2008-09 (first) admissions cycle, a total of 37 applicants with “mailed” application status (23 males and 14 females) disclosed a previous felony conviction. The applicants self-designated a single racial and ethnic category on the PTCAS application:

- 14 White (not of Hispanic origin)
- 6 Hispanic / Latino
- 4 Asian / Pacific Islander
- 3 African American / Black (non-Hispanic)
- 6 Other
- 4 Declined to state

---

<sup>25</sup> Dickerson D. Background checks in the university admissions process: an overview of legal and policy considerations. *Journal of College and University Law*. 2008; 34:2. <http://ssrn.com/abstract=1117797>. Accessed August 15, 2009.

<sup>26</sup> Langhauser D. Use of criminal convictions in college admissions. *Journal of College and University Law*, 2008:34:2.

Seven of these applicants received one or more offers of admission from programs participating in PTCAS for the 2009 entering class. APTA does not collect applicant-specific data on offers of admission made by PT education programs that did not participate in PTCAS.

The 2009-10 (second) PTCAS application form includes a felony question and instructions:

**“Have You Ever Been Convicted of a Felony?\*** Select Yes or No. PTCAS requires you to report any felony convictions. PT programs may require criminal background checks and/or drug tests in order to verify your eligibility to participate in clinical education, to confirm your eligibility for PT licensure, and to ensure patient safety. You may also be required to report one or more of the following types of records directly to your designated PT programs with details about the judgments or disciplinary action:

- Misdemeanor convictions
- Arrests for misdemeanors and felonies
- Adjudication withheld
- Nolo contendere
- Plea bargain

If you are convicted of a felony after you e-submit your PTCAS application, you must inform your designated PT programs that an action has occurred. If you answered "Yes" to the previous question, you must enter an explanation in the box below. Include 1) a brief description of the incident and/or arrest, 2) specific charge made, 3) related dates, 4) consequence, and 5) a reflection on the incident and how the incident has impacted your life. If you fail to provide accurate information when answering this question, you may jeopardize your application.”<sup>27</sup>

PTCAS is exploring the possibility of including a centralized criminal background check process for applicants in the future. More information will be shared with APTA members as it becomes available.

### State Laws

PT education programs should research state laws to determine what information may be requested on the local PT program application and any limitations on the use of that data in the admissions process. For example, language in Section 2 of Massachusetts Law 151C, “Unfair Practices,” limits the type of information one can request of an applicant to a Massachusetts school:

“It shall be an unfair educational practice for an educational institution...to request any... information...regarding: (i) an arrest, detention, or disposition regarding any violation of the law in which no conviction resulted or in which a conviction has been vacated, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace, or (iii) any conviction of a misdemeanor where such conviction occurred more than five years prior to the date of such application for admission, unless the applicant was sentenced to imprisonment upon conviction of such misdemeanor, or such individual has been convicted of any offense within the five years’ period.”

The Ad Hoc Committee on Criminal Background Checks for the Boston University School of Medicine (BUSM) interpreted this statute to mean the institution cannot directly ask applicants about arrests or certain misdemeanor convictions on an application for admission to BUSM, but it is permissible for the

---

<sup>27</sup> Physical Therapist Centralized Application Service (PTCAS) Instructions: 2009-10. American Physical Therapy Association. 2009. <http://www.ptcas.org/General.html>. Accessed July 15, 2009.

school to receive such information via a criminal background check performed by an outside entity. PT programs should consult legal counsel to interpret applicable state laws.<sup>28</sup>

### Accepted Applicants Only

The American Association of Colleges of Pharmacy (AACP)<sup>29</sup> agreed with the Association of American Medical Colleges (AAMC) that institutions should conduct criminal background checks only on accepted applicants so that the results are not a factor in the initial admissions decision process. Also, background checks on all applicants who apply would be financially and administratively burdensome on health profession institutions and applicants.<sup>30</sup>

A PT education program may wish to characterize any offer of admission as contingent upon the applicant's completion of a criminal background check with satisfactory results, as defined by the institution. Other conditions may include submission of immunization records, health insurance, drug testing, and any outstanding prerequisites.

### Revocation of Acceptance Offer

If an applicant does not fully disclose a past offense as required, regardless of its severity, a PT education program may decide to revoke the applicant's offer of admission based on the falsification of application documents. According to David Aronofsky, general counsel for the University of Montana, an institution that decides to revoke an offer of admission based on the results of a background check and after the appropriate due process should be prepared to provide the student with a reasonable explanation for the decision based on pre-determined criteria.<sup>31</sup>

Unless a state law prohibits it, court opinions generally support an institution's right to deny or revoke an offer of admission because of an applicant's prior criminal history. Health profession institutions most often deny or revoke an offer of admission because the conviction is incompatible with values of the institution; or the applicant did not disclose the offense on the application, refuses to undergo a background check, or would be unable to fulfill the requirements of the program related to experiential education and licensure.<sup>32</sup>

For example, the School of Health Related Professions at the University of Medicine and Dentistry in New Jersey instructs applicants to the Doctor of Physical Therapy (DPT) Program that "Any omission or false or misleading information may result in actions including, but not limited to, denial or rescission of an offer of admission, disciplinary action or dismissal."<sup>33</sup>

---

<sup>28</sup> Ad Hoc Committee on Criminal Background Checks Report to the Dean. Boston University School of Medicine. March 15, 2006. [http://www.bumc.bu.edu/www/busm/ood/images/Committee\\_Reports/CommExecSumFinal.doc](http://www.bumc.bu.edu/www/busm/ood/images/Committee_Reports/CommExecSumFinal.doc). Accessed September 5, 2006.

<sup>29</sup> Report of the Criminal Background Check Committee. American Association of Colleges of Pharmacy (AACP). 2006. <http://www.aacp.org/resources/academicpolicies/admissionguidelines/Documents/AACPBackgroundChkRpt.pdf>. Accessed August 1, 2009.

<sup>30</sup> AAMC, *supra* note 6.

<sup>31</sup> Aronofsky D, March H, Morris M, Bell K. Employee Criminal Background Check Policy: Legal Issues. NACUA National Conference. The University of Montana. 2005. <http://www.aacp.org/resources/academicpolicies/admissionguidelines/Documents/CriminalConvictAdmission.pdf>. Accessed October 15, 2009.

<sup>32</sup> Milam S. "Student Criminal Background Checks". NACUA Notes. March 10, 2006;4:1. [http://www.nursing.emory.edu/pulse/faculty\\_tools/compliance\\_docs/fc\\_nacuanotes.pdf](http://www.nursing.emory.edu/pulse/faculty_tools/compliance_docs/fc_nacuanotes.pdf). Accessed September 5, 2009.

<sup>33</sup> Student Handbook: 2009-10. University of Medicine and Dentistry of New Jersey School of Health Related Professions. 2009. [http://shrp.umdj.edu/current\\_students/pdf/Handbook.pdf](http://shrp.umdj.edu/current_students/pdf/Handbook.pdf). Accessed October 1, 2009.

## INSTITUTIONAL BACKGROUND CHECK POLICIES

Programs may want to address the following issues in a criminal background check policy. These items were identified in different policies established by PT education programs or other health profession institutions.

### **Purpose of Background Check**

If a criminal background check is or may be required, the program should describe the purpose or rationale for the check in relation to the clinical education or licensure requirements. In the case of the Doctor of Physical Therapy Program at the University of Delaware, physical therapist students are required to complete a CBC "...during the winter session of the first professional year in order to comply with the requirements for the pediatric integrated clinical experience".<sup>34</sup> More commonly, a program's explanation is not specific to a particular clinical site or experience.

### **Applicability**

The program or institution may describe to whom the background check policy applies and any exemptions. The George Washington University School of Medicine and Health Sciences defines separate background check responsibilities for prospective, new, and enrolled PT students, while other programs do not differentiate among these groups.<sup>35</sup>

### **Background Checks Required**

There are numerous types of criminal background checks. The institutional policy may define all of the checks required and any additional checks that may be required for selected students (eg, international). If the requirements vary by clinical education site, then the policy may want to list the checks that are common to all or inform students that background check requirements are not standardized.

### **Pending and New Charges**

The program policy should indicate whether the applicant or student is responsible for reporting any future charges or the outcome of pending charges to the institution. Nova Southeastern University<sup>36</sup> and the University of Medicine and Dentistry of New Jersey require PT and other health profession students to notify the institution of any future convictions, arrests, detentions, charges, or investigations by any law enforcement authorities.<sup>37</sup>

### **Timeline**

The program may establish a deadline or timeframe for students to initiate and complete the background check process. For example, the College of Nursing and Health Sciences at the University of Vermont

---

<sup>34</sup> DPT Program Policies and Procedures. University of Delaware, College of Arts and Science, Doctor of Physical Therapy Program. 2009.  
<http://www.udel.edu/PT/Study%20With%20Us/DPT%20PROGRAM%20POLICIES%20AND%20PROCEDURES-updated%206-07%20copy%201.pdf>. Accessed September 20, 2009.

<sup>35</sup> Criminal Background Checks (CBC) and Drug Screening (DS) for the Health Sciences Programs. The George Washington University School of Medicine and Health Sciences. 2008.  
[http://www.gwumc.edu/healthsci/documents/admissions/Criminal\\_Bg\\_Check\\_Drug\\_Screen\\_Policy.pdf](http://www.gwumc.edu/healthsci/documents/admissions/Criminal_Bg_Check_Drug_Screen_Policy.pdf). Accessed October 10, 2009.

<sup>36</sup> Nova Southeastern University, *supra* note 21.

<sup>37</sup> University of Medicine and Dentistry of New Jersey, *supra* note 33.

recommends that accepted physical therapist and other graduate applicants initiate the background check process at least 4 weeks prior to matriculation and no fewer than 2.<sup>38</sup>

### Frequency of Checks

The program may indicate how recent a check must be completed prior to matriculation or entry into a clinical education experience. Applicants may be advised that subsequent checks may be requested in response to the requirements of a clinical education site.<sup>39</sup> In the 2008 APTA criminal background check survey, 61 percent of physical therapist students completed a check only once during the professional degree program, but the frequency could vary significantly depending on the requirements of experiential sites. (See Appendix)

### Policies and Procedures

Programs may describe the process students must follow to initiate a criminal background check and submit the results. The policies may also describe the possible consequences of a positive criminal record. The Department of Physical Therapy at the University of Texas Medical Branch at Galveston states, "Students who do not pass the security clearance may be subject to a HOLD on enrollment, rescheduling of training opportunities, or delay of graduation and may in fact impact licensure after graduation." Other programs indicate that a positive criminal record will not necessarily result in the revocation of an acceptance offer or expulsion from the program.<sup>40</sup>

### Committee Review

Programs may define the standards or processes that the dean, student affairs office, or appropriate committee will use to evaluate any offenses reported. AACP recommends that a pharmacy school's final decision regarding any action related to the background check should be communicated to the applicant only after a careful review of the self-reported information in the application file and the information in the criminal background check report.<sup>41</sup>

### Student Rights

The institutional policy may also indicate whether students and applicants have the right to review the criminal background check reports for accuracy by contacting the institution or the company/agency conducting the search. It may also describe a process that students can follow if they wish to appeal the background check results or decisions related to them.<sup>42</sup>

### Confidentiality and Recordkeeping

The program may describe how the institution will maintain the student's background records, if stored by the institution, and how the criminal background check report will be disposed of after the purpose(s) for which it was collected has been served. The University of Vermont indicates that "criminal background reports and related information will be kept in secure files separate from other student

---

<sup>38</sup> Policy and Procedures for Criminal Background Checks of Entry-Level Graduate Program Applicants and Students: Version 031507. The University of Vermont College of Nursing and Health Sciences. [http://www.uvm.edu/~cnhs/student\\_services/Criminal%20Background%20Checks-Graduate-031507.pdf](http://www.uvm.edu/~cnhs/student_services/Criminal%20Background%20Checks-Graduate-031507.pdf). Accessed October 15, 2009.

<sup>39</sup> Alley NM, Marrs JA, Schreiner B. Nurses promise to safeguard the public: is it time for nationally mandated background checks? *JONA'S Healthcare Law, Ethics, and Regulation*. 2005;7:4B.

<sup>40</sup> Admission Requirements. University of Texas Medical Branch, The School of Health Professions. [http://shp.utmb.edu/programs/pt/Admission\\_Requirements.asp](http://shp.utmb.edu/programs/pt/Admission_Requirements.asp). Accessed November 1, 2009.

<sup>41</sup> AACP, *supra* note 29.

<sup>42</sup> Milam, *supra* note 32.

records,” and a “...report of no criminal history will be destroyed upon either graduation or a final decision by the student not to matriculate...” Reports with criminal offenses are retained in the institution’s Office of Student Services and “held in the strictest confidence.”<sup>43</sup>

### **Authorization / Disclosure / Release Form**

A program may require students to sign an authorization or release form that gives defined administrative units or individuals within the institution authorization to view the results of the checks, as needed. A program may choose to request a release form as part of the admissions process or after matriculation, depending on the timeline for submission of background check results. The Doctor of Physical Therapy Program at the University of Iowa states, “Applicants invited for interviews are required to sign a Background Release Form...” and “Applicants offered admission are required to provide signed consent for conducting an External Criminal Background Investigation in addition to providing a signed Release of Information Waiver.”<sup>44</sup>

The Division of Physical Therapy at the University of Utah requires students to sign a more detailed “Release of Information/Waiver” statement:

“I hereby authorize the University of Utah to perform a criminal history background check, at time of acceptance and as needed throughout the course of my education, to ascertain any and all information that may be pertinent to my qualification as a student in the physical therapy program. The information obtained will be available to persons involved in making clinical placement or other academic decisions or for the purpose of assisting in making promotion decisions about me. I understand that I have the right to review and respond to any information obtained by the University of Utah pursuant to this release. I understand that I must make a written request to review and/or respond to this information. I hereby release the University of Utah and all persons, organizations, or government agencies, from any damages of, or resulting from furnishing the information described above. I verify that the information I have provided is complete and true. I understand that any omission or mis-statement, may result in the termination of my physical therapy education. Most convictions will not automatically disqualify candidates. The seriousness of an offense, how related to the program and date of conviction are considered.”<sup>45</sup>

### **Disclaimer**

The criminal background check policy or student handbook may include a disclaimer indicating that a criminal background check process does not guarantee the safety of students, patients, faculty, or staff or predict the individual’s future behavior in the program or profession. For example, Sueng-Hui Cho, the student responsible for killing 32 and injuring 25 individuals at the Virginia Polytechnic Institute and State University in 2007, did not have a prior criminal record.<sup>46</sup>

The student disclaimer may also state that an acceptable criminal background check, as defined by the institution, state, or experiential site, does not guarantee the student will be eligible to complete the

---

<sup>43</sup> The University of Vermont, *supra* note 38.

<sup>44</sup> Admission to the DPT Program. University of Iowa Graduate Program in Physical Therapy and Rehabilitation Science. [http://www.medicine.uiowa.edu/PhysicalTherapy/degrees/dpt\\_admissions.html](http://www.medicine.uiowa.edu/PhysicalTherapy/degrees/dpt_admissions.html). Accessed October 15, 2009.

<sup>45</sup> Division of Physical Therapy Program Application Post-professional Doctorate of Physical Therapy. University of Utah. 2007. [http://www.health.utah.edu/pt/prospective/post/PPDPT\\_APPLICATION.pdf](http://www.health.utah.edu/pt/prospective/post/PPDPT_APPLICATION.pdf). Accessed October 10, 2009.

<sup>46</sup> Davey M. Gunman showed few hints of trouble. *The New York Times*. February 16, 2008:A1.

program or obtain a physical therapist license upon graduation. The experiential site and state board of physical therapy may interpret a student's criminal record differently or uncover new information not revealed in previous record searches.

### **Fair Credit Reporting Act**

If an employer hires an outside individual or firm to conduct a criminal background check, the employer is subject to the Fair Credit Reporting Act (FCRA). Although FCRA does not explicitly include educational institutions, the applicability to PT education programs may depend on legal interpretation and circumstances. Under FCRA, employers must obtain permission of an employee (or student) before obtaining reports through a CBC vendor and to disclose any possible actions or activities related to obtaining these reports. PT education programs should provide a link to or a copy of an individual's rights under the federal Fair Credit Report Act (FCRA) 15 U.S.C. § 1681 et seq. A copy of the FCRA is available online.<sup>47</sup>

### **Payment Process**

Program policies may provide students with the anticipated or average fee amount for the background check and to whom it should be paid. For instance, the Doctor of Physical Therapy Program at Oakland University states that the criminal background fees are required in order to participate in clinical experiences and will cost approximately \$150 per year.<sup>48</sup> Whereas, the University of Cincinnati does not specify the amount and states that physical therapist students "should be prepared to absorb the cost of the background check."<sup>49</sup>

### **Student Refuses Background Check**

The institutional policy should address the issue of students who refuse or fail to participate in the criminal background check process, as required. The program may decide to rescind an offer of admission or dismiss a student from the PT education program. Programs should consult legal counsel for guidance. Physical therapist students at West Virginia University who refuse to participate in a background check must sign the WVU "Fingerprinting and Background Check Disclaimer" form. It states, "By choosing not to have the proper background clearance, I understand that I may not be able to complete the rotations and internships which are part of the DPT curriculum. If this occurs, I will not be able to complete the DPT curriculum and thus will not earn the DPT degree."<sup>50</sup>

## **BACKGROUND CHECK RESULTS**

### **Results Sent to Program**

PT education programs may choose to receive an original copy or a summary of the background report in order to determine whether the student's record may prevent him or her from participating on rotations or obtaining a license. For instance, Marquette University ensures that a background check is

---

<sup>47</sup> Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq. Federal Trade Commission (FTC). Available at: <http://www.ftc.gov/os/statutes/fcradoc.pdf>. Accessed November 2, 2009.

<sup>48</sup> DPT Brochure. Oakland University, School of Health Sciences, Doctor of Physical Therapy (DPT) Program. 2009. [http://www2.oakland.edu/shs/pt/files/2009\\_DPT\\_Brochure.pdf](http://www2.oakland.edu/shs/pt/files/2009_DPT_Brochure.pdf). Accessed October 3, 2009.

<sup>49</sup> Doctorate of Physical Therapy High School Early Admissions Pathway (HEAP) Program Brochure for Admission in Fall 2010. University of Cincinnati Medical Center, Department of Rehabilitation Sciences. 2009. <http://cahs.uc.edu/Docs/HEAPbrochure2010.pdf>. Accessed October 25, 2009.

<sup>50</sup> Fingerprinting and Background Check Disclaimer. West Virginia University, School of Medicine Professional Programs, Doctor of Physical Therapy Program. <http://www.hsc.wvu.edu/som/pt/pdfs/ClinicalEdu/backgrnd.pdf>. Accessed October 10, 2009.

successfully completed for all students participating in an internship experience, but it does not forward the individual background search results to the clinical education site. The clinical site must request a copy of the results directly from the student, if required.<sup>51</sup>

The American Association of Colleges of Pharmacy recommends that colleges and schools of pharmacy receive and review a detailed copy of a report, if permitted by institutional policy and state laws. An alternative, formula-based approach that delivers only “processed” information or conclusions (eg, “red,” “yellow,” or “green” indicators for criminal background checks assessed as “unacceptable,” “subject to caution,” or “acceptable”) was regarded as inadequate and flawed.<sup>52</sup>

### Results Sent to Clinical Education Site

Alternatively, institutions may direct students to present the results of the background checks directly to clinical education sites, as per state, site, or institutional policies. Each clinical site determines whether a student may participate in a clinical rotation at the site. In these cases, the decision is independent from any decision made by the educational program. A program’s policy may state whether the institution will make an effort to find an alternate clinical site when the offense prohibits the student from participating in a clinical experience at the original site.

Students enrolled in the Department of Physical Therapy at East Carolina University are responsible for arranging, paying for, and submitting criminal background check reports directly to the appropriate clinical education site without assistance from the institution’s administration. The policy indicates that program administrators are “not responsible or liable for nor will they intervene in any way in the decision by a clinical site to not accept a student based on the contents of required reports.”<sup>53</sup> Similarly, the Division of Physical Therapy at Georgia State University gives clinical education facilities the right to not accept a PT student based on the findings of the criminal background check or drug screen.<sup>54</sup>

### Evaluation Criteria

If a program will make decisions in response to the background check report, it may establish criteria to help standardize the record review process. Dickerson recommends that institutions offer specialized training to faculty, staff, and administrators who are responsible for evaluating criminal records to help them better interpret the results and pose the appropriate questions. He also recommends that institutions consult with counselors, psychiatrists, attorneys, and other experts for guidance.<sup>55</sup>

The evaluation criteria developed by an institution may reflect the experiential site requirements, licensure restrictions, and an attempt to ensure campus and patient safety. The evaluation criteria should be consistent to ensure that any institutional actions made on the basis of a criminal offense are not unreasonable, arbitrary, or capricious.<sup>56</sup>

Administrators at the University of Vermont identified several factors to determine whether an individual’s criminal history will result in a withdrawal of a conditional offer of acceptance:

---

<sup>51</sup> Clinical Internship Information for Clinical Sites Class of 2009 and Beyond. Marquette University, Department of Physical Therapy. <http://www.marquette.edu/chs/pt/about/documents/DPTClinEdManual.pdf>. Accessed October 22, 2009.

<sup>52</sup> AACP, *supra* note 29.

<sup>53</sup> PT Student Handbook. East Carolina University, Department of Physical Therapy, College of Allied Health Sciences. 2009. <http://www.ecu.edu/cs-dhs/pt/upload/PT-Student-Handbook-2009.pdf>. Accessed October 4, 2009.

<sup>54</sup> Criminal Background Check & Drug Screen. Georgia State University, School of Health Professions, Division of Physical Therapy. <http://chhs.gsu.edu/pt/782.html>. Accessed October 10, 2009.

<sup>55</sup> Dickerson, *supra* note 25.

<sup>56</sup> Langhauser, *supra* note 26.

- The length of time since the incident occurred and the age of the applicant at the time of the incident
- The seriousness of the incident
- Whether the applicant has made full restitution and/or participated in any programs of rehabilitation
- Whether the applicant disclosed the information accurately on the application form
- Any other extenuating circumstances or conduct since the time of the incident offered by the applicant<sup>57</sup>

Boston University School of Medicine (BUSM) and the Association of American Medical Colleges also identified several issues for administrators to consider in the evaluation of criminal records.

- Nature and seriousness of the offense
- Circumstances under which the offense occurred
- Age of the person when the offense was committed
- Number of offenses
- Length of time that has passed since the offense was committed
- Evidence of successful rehabilitation
- Accuracy of the information provided by the applicant on the application
- Evidence of a pending offense that has not been finally adjudicated, in which case, the individual might be found innocent
- Experiential site and state board licensure policies<sup>58</sup>

BUSM authors added that, "...individual licensure boards act in an entirely independent manner and standards are likely to be state specific and to evolve over time, making it impossible to anticipate the impact of criminal history information on any individual's prospects for licensure." The same philosophy also applies to state boards of physical therapy. PT education programs may charge a review committee to make judgments on each offense.<sup>59</sup>

An institution's final decision related to applicants or students with a positive criminal background check report should be made in a manner consistent with institutional policies and procedures developed and approved in accordance with institutional standards and legal counsel. This decision-making process may include input from various sources, including, for example, representatives of the admissions committee and staff in the office of admissions, legal counsel, and minority affairs. In developing these policies and procedures, PT education programs should take into account the requirements of affiliated clinical education sites.

### **Institution-defined List of Serious Offenses**

Institutions may compile a list of offenses that may automatically disqualify an individual from enrolling into a PT education program due to institutional, state, experiential site, or state board of physical therapy policies. Institutions that identify serious offenses in advance strive to standardize their criteria and help students self-determine whether a particular offense is likely to prevent them from completing the PT curriculum or obtaining a license in the future. A clinical education site may not accept students who were convicted of felonies, such as assault with a deadly weapon, rape, sexual assault, murder,

---

<sup>57</sup> The University of Vermont, *supra* note 38.

<sup>58</sup> Sabalis R. Criminal Background Checks: Meeting the Expectations of the Public and the Needs of the Profession. *The Advisor: Journal of the National Association of Advisors for the Health Professions (NAAHP)*. 2006;26,2: 5-8.

<sup>59</sup> Boston University School of Medicine, *supra* note 28.

workplace violence, armed robbery, or other crimes deemed violent. Individuals with such a history may be seen as posing an unacceptable risk to the safety of students, patients, faculty, and staff.

The George Washington University School of Medicine and Health Sciences defined a set of major offenses (“red flags”) as “...those that indicate clear potential threat or harm to the community” that will lead to the automatic dismissal from the program. All other incidents are classified as minor offenses (“yellow flags”) that will require a reviewed based on the nature of the crime and the nature of the position.<sup>60</sup>

The Rueckert-Hartman School of Health Professions at Regis University also established a list of offenses that would automatically disqualify a PT applicant from enrolling in the program, if convicted. The University also reserves the right to deny enrollment to physical therapist and other health profession students for any reason that might lead them to endanger themselves, faculty, staff, students, others, or property.<sup>61</sup>

The University of Tennessee Health Science Center’s policy states, “A student whose CBC shows negative findings, including the following, may be excluded by the healthcare facility from a clinical placement program:

- History of any felony conviction within the last seven years.
- History of class “A” misdemeanor conviction within the last seven years.
- History of class “B” misdemeanor conviction within the last seven years.
- Listing on the registry maintained by the Department of Health pursuant to T.C.A. Section 68-11-1004.
- Listing on any of the following registries: HHS/OIG list of excluded individuals, GSA list of Parties Excluded from Federal Programs, U.S. Treasury, Office of Foreign Assets Control (OFAC), List of Specialty Designated Nationals (SDN)
- An encumbered license (current or prior) in a health-related field.”<sup>62</sup>

Colleges and universities in the state of Virginia are prohibited from enrolling students who have been convicted of any “barrier crimes,” a specific and extensive list of serious offenses defined by the state legislature.<sup>63</sup>

Similarly, the Medical University of South Carolina College of Nursing categorizes each offense based on its “moral turpitude” defined as the “disregard for established standards of right and wrong in the commission of a crime, above and beyond the crime itself”. According to the policy, crimes that involve moral turpitude include arson, assault and battery, possession of a controlled substance with intent to distribute, and forgery. Crimes that may involve moral turpitude include contempt of court and misconduct in an office. Crimes that do not involve moral turpitude include disorderly conduct, pointing a firearm, manslaughter, and others.<sup>64</sup>

---

<sup>60</sup> George Washington University, *supra* note 35.

<sup>61</sup> Disqualifying Offenses. Regis University, Rueckert-Hartman School of Health Professions. 2005. <http://www.regis.edu/content/rh/pdf/Disqualifying%20offenses.pdf>. Accessed October 11, 2009.

<sup>62</sup> University of Tennessee Health Science Center (UTHSC) Policy on Criminal Background Check. 2005. Available at: [http://www.utmem.edu/policies/w932\\_document\\_show.php?p=418](http://www.utmem.edu/policies/w932_document_show.php?p=418) . Accessed September 30, 2009.

<sup>63</sup> Barrier Crimes: Code of Virginia 63.2-1726. Virginia Department of Social Services. Available at: [http://www.dss.virginia.gov/files/division/obi/crf/guidelines\\_procedures/Barrier\\_Crimes\\_63.2-1726.pdf](http://www.dss.virginia.gov/files/division/obi/crf/guidelines_procedures/Barrier_Crimes_63.2-1726.pdf). Accessed September 19, 2009.

<sup>64</sup> MUSC College of Nursing Student Handbook: 2008-09. Medical University of South Carolina College of Nursing. Available at:

Conversely, AAMC recommends that medical schools do not establish a list of prohibited offenses. It advises member institutions to holistically evaluate each offense on a case-by-case basis. PT education programs must work with their legal counsel to determine which approach is most appropriate.

### Types of Records

Institutions may determine the seriousness of an offense partially by its legal classification. Each jurisdiction may have slightly different definitions for various crimes. A felony in one state may be classified as a gross misdemeanor in another. PT education programs, experiential sites, and licensing boards should take both the type of offense and its classification into consideration during a review process. The United States Code made available by the US House of Representatives states that an offense that is not specifically designated is classified by the maximum term of imprisonment authorized.

- **Class A felony** - life imprisonment, or death if the maximum penalty
- **Class B felony** - 25 years or more
- **Class C felony** - less than 25 years but 10 or more years
- **Class D felony** - less than 10 years but 5 or more years
- **Class E felony** - less than 5 years but more than 1 year
- **Class A misdemeanor** - 1 year or less but more than 6 months
- **Class B misdemeanor** - 6 months or less but more than 30 days
- **Class C misdemeanor** - 30 days or less but more than 5 days
- **Infraction** - 5 days or less, or no imprisonment if authorized

A “serious violent felony” is defined in the U.S. code as a federal or state offense of murder; manslaughter (other than involuntary manslaughter); assault with intent to commit murder; assault with intent to commit rape; aggravated sexual abuse and sexual abuse; abusive sexual contact; kidnapping; aircraft piracy; carjacking; extortion; arson; firearms use; firearms possession; or attempt, conspiracy, or solicitation to commit any of the above offenses.<sup>65</sup>

### Minor Traffic Violations

Minor traffic violations may be revealed in the criminal background check process. The PT education program, experiential sites, and state licensure boards may require the individual to disclose these offenses. There is no common definition of a “minor traffic violation.” Definitions vary by state, city, and institution. It is generally defined as a non-moving violation or as a traffic offense in which only a citation was written.<sup>66</sup> Any traffic violations involving drugs or alcohol are not generally considered minor offenses and should be disclosed by the applicant, such as driving while intoxicated, (DWI), driving under the influence (DUI), driving while license is suspended (DWLS), failure to appear (FTA), reckless driving, open container, and assault with a motor vehicle. Each institution may wish to establish its own inventory of minor traffic violations in accordance with applicable state laws.<sup>67</sup>

---

[http://www.musc.edu/nursing/nursing\\_new/studentservices/documents/studenthandbook/SectionVI.pdf](http://www.musc.edu/nursing/nursing_new/studentservices/documents/studenthandbook/SectionVI.pdf). Accessed November 3, 2009.

<sup>65</sup> United States Code. Title 18, Part II, Chapter 227 Subchapter A, 3559, Sentencing Classification of Offenses. United States House of Representatives.

[http://www4.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00003559----000-.html](http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00003559----000-.html) and <http://uscode.house.gov/download/download.shtml>. Accessed September 15, 2009.

<sup>66</sup> Traffic Violations. Encyclopedia of Everyday Law. <http://law.enotes.com/everydaylaw-encyclopedia/traffic-violations>. Accessed September 10, 2009.

<sup>67</sup> Examples of Minor Traffic Violations (PD 27). Texas Department of Criminal Justice. 2007. <http://www.tdcj.state.tx.us/vacancy/hr-policy/pd-27a.pdf>. Accessed on August 26, 2009.

### Arrest Records

The institutional policy should state whether the applicant should reveal any arrest records, in addition to convictions, to the institution as part of the application. Use of arrest data in screening processes for employment has been adjudicated as a discriminatory practice and is therefore barred under Title VII of the US Civil Rights Act of 1964. There is no federal law that prohibits the use of arrest records in the academic admissions process, but individual states may not allow it. Programs that review arrest records may be limited to using the data for identifying pending court dispositions.<sup>68</sup>

### Misdemeanors

State laws and organizational policy may dictate whether institutions, sites, and licensure boards may take misdemeanor offenses into account when making a decision. PT education programs must research these policies to determine whether they may take misdemeanors into consideration.

The National Council of State Boards of Nursing's (NCSBN) "Uniform Core Licensure Requirements" include general guidance on how state boards should assess different types of offenses. NCSBN states, "A felony conviction is a significant event. With the common use of plea bargains, the behavior underlying a misdemeanor should also be scrutinized on behalf of the vulnerable persons who are recipients of nursing care. It is the responsibility of the board of nursing to use the conviction history (including plea agreements) in decision making."<sup>69</sup>

### Juvenile Records

The institution should also review state laws to determine if they may receive or review juvenile criminal records. For instance, Texas state law prohibits colleges and universities from considering the records of minors. The AAMC and AACP recommend that a student's background check not include "any offense committed as a juvenile, except for offenses for which a juvenile was tried as an adult."<sup>70</sup>

### Expunged Records

An expungement is a legal procedure that removes a criminal record from the files and computer systems of the court, police department, and other law enforcement agencies. Individuals who believe their records have been "expunged" will likely answer "no" to the question relative to prior arrests or convictions. Students may discover as a result of the background check process that the records were not removed or sealed due to a court clerical oversight, attorney error, payment problem, or other reason. Not all convictions can be expunged, and reportable offenses vary by state.<sup>71</sup>

In 2006, the U.S. Department of Justice reported that 16 states, the District of Columbia, and the Virgin Islands have statutes that provide for the expungement of felony convictions. A New Jersey state law allows individuals with expungements to answer "no" to questions on an employment application regarding past arrests or convictions. Other states may have similar laws.<sup>72</sup>

### Errors in Reporting

Criminal background checks are not infallible and do not necessarily predict future unprofessional or illegal behavior. Errors and limitations in the record search process can mean that a convicted felon's record are returned "clean" or an individual who does not have a record is confused with someone who

---

<sup>68</sup> Dickerson, *supra* note 5.

<sup>69</sup> Uniform Core Licensure Requirements. National Council of State Board of Nursing. <https://www.ncsbn.org/667.htm>. Accessed November 2, 2009.

<sup>70</sup> AAMC, *supra* note 6.

<sup>71</sup> Yuska G. Expungement: The answer to an employment background check in this era of heightened security. Stark & Stark. FindLaw.com. <http://library.findlaw.com/2003/Jun/5/132788.html> . Accessed November 2, 2009.

<sup>72</sup> U.S. Bureau of Justice, *supra* note 17.

does. For instance, in 2001 auditors for the state of Colorado Department of Education identified teachers with felonies, misdemeanors, and child abuse records despite the use of state and FBI fingerprint checks at the time.<sup>73</sup>

In 2005, national databases were reported to have a 41 percent error rate due to inaccurate or incomplete reporting at the county, state, and federal level; as well as mistakes made on the part of the background check staff. Shawn Bushway, a criminologist at the University of Maryland, led a recidivism rate study that inadvertently revealed substantial inaccuracies in the reports provided by one unnamed background search vendor. The institution contracted with the company to conduct a search on the 120 parolees and probationers in the study to determine whether any additional arrests would appear on their records. Sixty-four of the 120 convicted criminals in the study were reported to have no criminal records, despite known felony convictions.<sup>74</sup> Although the accuracy of background check reports may have improved in recent years, a PT education program should rely on a combination of background check sources to decrease the chance of receiving inaccurate or incomplete results.<sup>75</sup>

### Appeals Process

The criminal background check process is imperfect. A student may receive an inaccurate record report as a result of mistaken identity or because the criminal record contains errors or omissions that make the offense appear more serious than it is. The institution's criminal background check policy should include an appeal process for students who believe there are inaccuracies in their records or that the institutional response to the record was inappropriate based on the nature of the offense or other factors.<sup>76</sup>

Students have the right to review their FBI records and to complete, or challenge the accuracy of, the information contained in that record. Students who wish to review their FBI records should contact the FBI field office that serves their area for instruction on the procedure and any applicable fees.<sup>77</sup>

If a student claims the report from a private background check firm is inaccurate, the program should provide the student with the option to have the vendor verify the results of the background check. The program may also pre-select a second approved vendor for the student to use if there are any suspected problems associated with the quality of service provided by the primary vendor. The program should consider whether it will postpone any action until the results of the review and appeal are finalized.

### Implications for Minority Students

There are a disproportionate number of African-Americans and Latinos in U.S. jails and prisons. Disagreement persists in the criminal justice community as to the extent to which race plays in the likelihood an individual will be arrested and the subsequent judicial decisions.<sup>78</sup> Minorities may be more

---

<sup>73</sup> Bridgman A. Conducting criminal background checks on school employees is smart policy, safe hiring, and it's the law. *American School Board Journal*. 2005;192,12.

<sup>74</sup> Scalet, *supra* note 20.

<sup>75</sup> Sullivan, *supra* note 16.

<sup>76</sup> Ernst CR, Rosen L. National Criminal History Databases: Issues and Opportunities in Pre-Employment Screen PRRN Conference, Long Beach. February 2002. <http://www.brpub.com/articles/FCRA.pdf> . Accessed October 12, 2009.

<sup>77</sup> Application for Licensure: Pharmacy Intern. State of Utah, Division of Occupational and Professional Licensing. <http://www.dopl.utah.gov/licensing/forms/003.pdf> . Accessed October 15, 2009.

<sup>78</sup> Pager D. The mark of a criminal record. *American Journal of Sociology*. 2003;108(5):937–75.

vulnerable due to racially biased law enforcement practices and judicial systems, or due to indirect societal and socioeconomic forces.<sup>79</sup>

Prospective minority students may be less likely to apply to a PT education program if they have any concerns about a past offense on their record, regardless of whether it would ultimately prohibit them from completing the program or obtaining licensure. To avoid the use of race as a decision-making factor, programs may choose to blind all criminal background check reports reviewed after offers of admission are made.<sup>80</sup>

If the institution chooses to give special consideration to the race and ethnicity of a student during the criminal history review, then it should carefully review the criteria with legal counsel to ensure the practice is legally defensible in a new era of race conscious admissions following Supreme Court's decision in the Michigan Affirmative Action cases. The U.S. Supreme Court ruled in 2003 that colleges and schools may use race in admissions decisions to support the recruitment of a diverse student body; however, the policy must be "narrowly tailored" to serve the compelling interest in diversity. Institutions must not provide separate admissions tracks or quotas for minorities, and should pursue race-neutral and ethnicity-neutral alternatives.<sup>81</sup>

## MANAGING BACKGROUND CHECK RESULTS

### Confidentiality and Recordkeeping

The National Association of College and University Attorneys (NACUA) recommends that CBC records be filed separately from academic records and that access be restricted to a limited number of individuals. Paper records should be stored in a locked file. Online and paper CBC records should not be accessible to unauthorized staff, faculty, administrators, students, volunteers, or parents.

### Disclosure of Results

Institutions that receive background check records directly from the vendor should identify the appropriate institutional offices or individuals who may have access to a student's criminal background check data. NACUA advises that "Only a limited number of individuals should be allowed to have access to criminal background check information, and it should be strictly on a need-to-know basis". To comply with the Family Educational Rights and Privacy Act (FERPA), PT education programs may decide not to give faculty access to these sensitive records because the results could influence how the student's performance is evaluated.<sup>82</sup>

The AACP recommends that institutions maintain the results of criminal background checks separately from policies, procedures, and decisions about applicants and/or students with medical, psychiatric, and substance abuse conditions and disabilities. It also emphasizes the need to maintain the confidentiality

---

<sup>79</sup> D'Alessio SJ. Race and the probability of arrest. *Social Forces*. June 2003;81(4):1381-1397.

<sup>80</sup> Boyd C. The criminal background check requirement for medical school admission: keeping minority applicants and the criminal justice system in close perspective. *The Advisor: Journal of the National Association of Advisors for the Health Professions*. 2006;26(2):9-14.

<sup>81</sup> Assessing Medical-School Admissions Policies: Implications of the U.S. Supreme Court's Affirmative-Action Decisions. AAMC. September 2003.

[https://services.aamc.org/Publications/index.cfm?fuseaction=Product.displayForm&prd\\_id=75&pr\\_v\\_id=65](https://services.aamc.org/Publications/index.cfm?fuseaction=Product.displayForm&prd_id=75&pr_v_id=65) .

Accessed November 2, 2009.

<sup>82</sup> Student Criminal Background Checks. *NACUA Notes*. Washington, DC: National Association of College and University Attorneys. 2006;4:1. <http://www.nacua.org/nacualert/memberversion/StudentCrimBckgndChks.asp> . Accessed September 20, 2009.

of any information in the background reports that is unrelated to decisions about admission and continued enrollment.<sup>83</sup>

PT education programs should exercise care to ensure the appropriate handling of information entered by the applicant regarding the applicant's criminal history in the PTCAS or program application and consider the institutional office in which this information should be maintained. Institutions should also ensure that the information in a criminal background check report is not used to unlawfully discriminate in the admissions process or evaluation of student performance.

### Experiential Sites

In response to the Joint Commission, many hospitals and health care facilities have implemented policies that require employees, students, and volunteers to undergo drug testing or criminal background checks. Experiential sites may receive these results directly from the background check vendor or student, receive a copy of the report from the PT education program, or receive an attestation statement from the program indicating that the student's criminal record does not violate the site's eligibility criteria.

Programs should determine whether it is necessary to encourage or mandate that affiliated clinical education sites maintain the background check results in a way that complies with FERPA. For instance, the School of Physical Therapy & Rehabilitation Sciences at University of South Florida provides students with FERPA information in its "Clinical Education Handbook" that states, "Each clinical center is encouraged to have a similar rule regarding the confidentiality of their student records. CCCEs and CIs may not reveal any information to other parties about the student without the student's written permission."<sup>84</sup>

### Financial Aid Officers

According to the Free Application for Federal Student Aid (FAFSA) Web site, "a federal law suspends a student's eligibility for federal student aid, if the student has been convicted under federal or state law for possession of or sale of illegal drugs (not including alcohol or tobacco) or if the offense occurred during a period of enrollment for which the student was receiving federal student aid (grants, loans, and/or work-study)."

If a background check was conducted prior to enrollment in the PT program, then the student would have been convicted of any drug offenses before the college or university distributed any federal aid. In addition, if a background check reveals a conviction, then the applicant may not be offered admission, or the offer may be revoked. As a result, the individual cannot receive Title IV funds because he or she is not enrolled. There is no known requirement at this time that obligates financial aid offices to receive background check data or report criminal background data to the U.S. Department of Education.<sup>85</sup>

### Campus Police / Security

NACUA states that student records may be used for campus security purposes. In some cases at other institutions, the campus police manage or store the criminal background check records. A 2006 AACCP report indicated that only one pharmacy institution shared background check results with the local campus police.

---

<sup>83</sup> AACCP, *supra* note 29.

<sup>84</sup> Clinical Education Handbook. University of South Florida. 2009. [http://health.usf.edu/NR/rdonlyres/F54D18D1-CBB2-46E4-8F12-C29C227AC9A9/0/20092010SPTRSClinicalEducationHandbook\\_web.pdf](http://health.usf.edu/NR/rdonlyres/F54D18D1-CBB2-46E4-8F12-C29C227AC9A9/0/20092010SPTRSClinicalEducationHandbook_web.pdf). Accessed October 12, 2009.

<sup>85</sup> Student Aid Eligibility Worksheet, Free Application for Federal Student Aid (FAFSA). U.S. Department of Education. 2009. <http://www.fafsa.ed.gov/before013.htm>. Accessed on September 14, 2009.

## Substance Abuse Counselors and Residence Life

PT education programs should consult with legal counsel to determine if it is appropriate to release student-specific background check results to student counseling centers, substance abuse counselors, directors of residence life, or campus housing administrators. NACUA advises programs not to share these results with unauthorized administrators because it may be considered a violation of FERPA unless the student gives the institution explicit permission to disseminate it.<sup>86</sup>

## State Police

The state police manage the criminal background check process for some institutions and may be responsible for transmitting the results. These results may be limited to offenses within the state and do not include non-criminal information, such as employment verification. Institutional policy manuals should reference any third-parties, such as the state police, that may or will receive their institutional records or background check results.

State laws may require colleges and universities to report selected personal data to a state authority that relate to criminal records. In 2006, the Virginia legislature passed a law that requires all colleges and universities in the state to submit personal information about their accepted applicants to the state police so it may be checked against registries of sex offenders. Virginia institutions must report the full names, genders, dates of birth, and Social Security numbers (or other student unique identifier) for all accepted students on an annual basis. The new statute specifies accepted students, rather than enrolled students, due to FERPA restrictions on releasing matriculated student data.<sup>87</sup>

## State Boards of Physical Therapy

PT education programs should not release offenses revealed in a CBC report to a state board of physical therapy, or another third party, unless it receives explicit and advanced approval from the student to disclose that information. Releasing that information without the student's permission is a FERPA violation.

Programs may prefer to instruct applicants or students with a criminal record to directly contact any state in which they intend to seek licensure. The Department of Physical Therapy & Human Performance at Florida Gulf Coast University states, "... it is the responsibility of the student to inquire with the Florida Board of Physical Therapy Practice as to whether a criminal record may limit the student's ability to attain licensure as a physical therapist or practice in certain settings."<sup>88</sup>

If a student authorizes the CBC vendor or institution to release or discuss his or her criminal record with a state board, the institution may be tempted to ask whether a specific offense would bar the student from ultimately obtaining licensure. The institution should not interpret the board's response, if given, as an absolute, unless it is a signed and binding decision. The composition of the state board and board policies may change by the time the student graduates from the PT education program or applies for licensure. Also, new information may be revealed in a different criminal background check process.<sup>89</sup>

---

<sup>86</sup> NACUA, *supra* note 82.

<sup>87</sup> Henig S. Va. colleges must give applicant data to state. *The Chronicle of Higher Education*. 2006;52(43):A16. <http://chronicle.com/daily/2006/06/2006062105n.htm>. Accessed June 21, 2006.

<sup>88</sup> Physical Therapy (DPT) Catalog. Florida Gulf Coast University, College of Health Professions, Department of Physical Therapy & Human Performance. 2009. <http://www.fgcu.edu/Catalog/gchpdetail.asp?ID=100>. Accessed October 15, 2009.

<sup>89</sup> Using Criminal Background Checks to Inform Licensure Decision Making. National Council of State Boards of Nursing. 3 Apr 2006. <https://www.ncsbn.org/794.htm>. Accessed September 1, 2006.

Appendix

**APTA CRIMINAL BACKGROUND CHECK SURVEY RESULTS FOR PHYSICAL THERAPIST EDUCATION PROGRAMS**

Responses Received: 119

All survey questions relate to applicants and students in most recent (entry-level) physical therapist class.

**Do your ACCEPTED APPLICANTS currently complete a criminal background check (CBC) process BEFORE they can matriculate into the professional PT program?**

Response	Count	Percent
YES	28	23.5%
NO	89	74.8%
VARIES - CBC required for selected individuals	2	1.7%

**If you indicated "VARIES," please describe:**

- The students complete it in their first quarter of study, but they are notified of the requirement in their acceptance letter to the program.
- CBC and drug testing are completed during first 4-6 weeks of school in CA.
- CBC is completed during first 4-6 weeks of school in FL.
- It is required for all enrolled students but not before they matriculate. It is completed in the first semester.
- They actually complete a CBC when they enter the program; by the end of the first semester, before going on part-time clinicals during the second semester (program is 6 semesters long).
- Our policy is new, so currently only students who were accepted after the policy was adopted are required to complete the check.
- It is state law that all health care students providing patient care complete background checks.

**What percent of your ENROLLED PT STUDENTS currently complete a CBC process before they are placed in clinical education sites? Enter "0" if none and leave blank if not applicable.**

Value	Count
0.00 thru 9.99	9
10.00 thru 19.99	9
20.00 thru 29.99	8
30.00 thru 39.99	4
40.00 thru 49.99	5
50.00 thru 59.99	5
60.00 thru 69.99	1
70.00 thru 79.99	4
80.00 thru 89.99	0
90.00 thru 99.99	2
100.00 thru 109.99	66

**How often do most PT students complete a CBC during your professional PT program?**

Response	Count	Percent
0 times	16	13.6%
1 time	72	61.0%
2 times	23	19.5%
3 times	6	5.1%
4 times	0	0.0%
5 times	1	0.8%
More than 5 times.	0	0.0%

**Does your institution or school/college mandate that all programs use the same CBC vendor?**

Response	Count	Percent
Yes	30	25.2%
No	74	62.2%
Not sure at this time	11	9.2%
Not applicable	4	3.4%

**What is the MINIMUM CBC fee per student?**

MEAN of responses with values more than 0 = \$40.28

**What is the MAXIMUM CBC fee per student?**

Mean of responses with values more than 0 = \$65.44

**What is the MEAN CBC fee per student?**

Mean of the responses with values more than 0 = \$47.15

**What is the MEDIAN CBC fee per student?**

Mean of the responses with values more than 0 = \$46.47

**Criminal Background Checks for Clinical Education Sites**

**What percent of your clinical education sites require students to complete a CBC before they can be placed at the site?** Enter "0" if none and leave blank if not applicable.

Value	Count
0.00 thru 9.99	12
10.00 thru 19.99	14
20.00 thru 29.99	24
30.00 thru 39.99	15
40.00 thru 49.99	10
50.00 thru 59.99	12
60.00 thru 69.99	8
70.00 thru 79.99	10
80.00 thru 89.99	3
90.00 thru 99.99	4
100.00 thru 109.99	4

**For those clinical education sites that require a student background check report, how are the results delivered to the site? Select all options that apply to one or more of your sites.**

Response	Count	Percent
The program reviews the background check report and releases the full report to the clinical education site.	19	16.0%
The program blindly releases the background check report to the clinical education site. (Program does not to have access to the criminal record report).	8	6.7%
The program reviews the background check report and sends a summary of results or confirmation to the clinical education site. (Site does not to have access to the full criminal record report).	43	36.1%
The student releases the report directly to the clinical education site.	71	59.7%
Other	18	15.1%

**If you indicated "other," please specify:**

- Student Affairs Office reviews and releases the information to clinical sites that require a background check.
- The typical way is for the student to send the report, but on occasion, the program will review and sign off that the report was completed.
- The student signs a form letting us release the information to the site if requested.
- Clin Ed reviews background check, Only student can release report directly to site. Multiple sites can check on line at American Databank.
- Dean's office receives reports electronically @ same time as the student. Dean's office sends a list to clinical programs with student name & date cleared ONLY. Programs do not view any background checks. If no date next to a student name, student not cleared. Programs can only report to clinics that check was completed & cleared; no specific information. If clinic needs to see actual report the student must release it to them directly.
- I review Background Check. If something is noted I call the site and ask them if they will accept a student with whatever the specific crime is on the record.
- CBC performed by the clinical site using a CBC vendor of their choice. This info is never released to the College, and often not released to the student.
- Students provide consent for the Program to release the report if the Program is to forward the results.
- Varies per clinical education site. All of the above apply, depending on the site.
- N/A
- We tell the site if there is a positive hit on the record (but we do not verify what it is), and they compare that to what the student provides them. If there is a discrepancy, then the site can obtain the full report from us, and decide whether to take the student based on them falsifying the record. Otherwise the site is free to respond to the copy of the CBC that the student gives to them, which is verified as accurate. This was setup in response to reports of students (from some program) changing their report that they take to the site. Our Corporate Screening package includes an electronic copy to the Assoc Dean of our College, as well as a hard copy to the student.
- Varies from site to site. Some sites will take our verbal confirmation of the CBC, others just the certificate is okay. Some require the full report.
- We receive a letter from the State Department that does the CBC stating the student has cleared, or we send a letter stating that we have the letter from the state dept clearing the student
- Some facilities require the students give them their password to go directly to the company's site to get the results. I prefer to stay out of the middle, but some facilities request that I verify with a letter that their background check was OK but they do not get the written results
- Program reviews the background check report and releases the report to clinical site only upon request of written verification. SSN is whited out.
- The clinical sites that require it (very few at this point) use their own vendor - they do not use our results. All of the clinical sites know that we have run a CBC when the students began the program.
- Site conducts own background check, although not all sites require background check, all students do rotate to those sites that require a check.
- Inform site that the CBC has been done and is acceptable, but site doesn't want a copy
- The Program provides a letter, which states that all of our students are required to pass a CBC prior to matriculation.
- A minority of sites require the background check. Those that require it are handled on a case basis. Student must request that we share info, and upon receipt of request, we send the entire background search.
- We require all of our students to complete the background check prior to starting the program. Our clinical sites know that this is what we require, so they do not request to see these documents. If they do, they can get them from the student.
- The program does not see the report and issues are handled at a higher administrative level. Students get the certification and are to provide it to the facility.

- The students are responsible for the CBC; the university does not have access to it unless the student gives it to us.

**Does your program limit the list of clinical education sites to which the student can send the background check report?**

Response	Count	Percent
Yes	1	1.4%
No	64	90.1%
Not sure at this time	6	8.5%

**Does the clinical education site typically indicate who is authorized at the site to receive the criminal background check report, if one is required? (eg, Center Coordinator of Clinical Education)**

Response	Count	Percent
Yes	54	46.2%
No	32	27.4%
Not sure at this time	27	23.1%
Not applicable	4	3.4%

**Does your program maintain an authorized CBC contact list for your clinical education sites? (eg, List of CCCEs)**

Response	Count	Percent
Yes	25	21.4%
No	70	59.8%
Not sure at this time	22	18.8%

**How frequently does your program update the list?**

Response	Count	Percent
Weekly	1	4.0%
Monthly	3	12.0%
Quarterly	4	16.0%
Annually	11	44.0%
Less frequently than annually	6	24.0%

**What identifiable information does the clinical education site receive about your students before they begin their clinical experience at that site? Select all that apply.**

Response	Count	Percent
Student's name	116	97.5%
Date of birth	29	24.4%
Gender	60	50.4%
Social Security Number	9	7.6%
Student College/University ID	19	16.0%
Current Mailing Address	105	88.2%
Permanent Mailing Address	50	42.0%
Phone Number	106	89.1%
E-mail Address	109	91.6%
Other	21	17.6%

**What percent of your clinical education sites do you estimate would be able to view a student's background check report online via a secure portal?**

Response	Count	Percent
100 percent	8	6.7%
90-99 percent	13	10.9%
80-89 percent	14	11.8%
70-79 percent	8	6.7%
60-69 percent	8	6.7%
50-59 percent	7	5.9%
40-49 percent	3	2.5%
30-39 percent	2	1.7%
20-29 percent	1	0.8%
10-19 percent	1	0.8%
1-9 percent	0	0.0%
None	15	12.6%
Not sure at this time	35	29.4%
Not applicable	4	3.4%

**Questions About Proposed Centralized CBC Process**

**Below are the report filtering options offered by the Association of American Medical Colleges (AAMC). Please select the filter that best fits your program's current needs. Your response is for informational purposes only.**

Response	Count	Percent
All Convictions: Felonies Only	6	5.0%
All Convictions: Felonies and Misdemeanors	23	19.3%
All Convictions + All Arrests Without Final Adjudication: Felonies Only	3	2.5%
All Convictions + All Arrests Without Final Adjudication: Felonies and Misdemeanors	3	2.5%
All Convictions + All Arrests REGARDLESS of Final Adjudication: Felonies Only	3	2.5%
All Convictions + All arrests REGARDLESS of Final Adjudication: Felonies and Misdemeanors	26	21.8%
Not sure at this time	50	42.0%
Not applicable	2	1.7%
Other	3	2.5%

**Would your program consider using a centralized criminal background check vendor for all or some its students and/or applicants?**

Response	Count	Percent
YES. Program would consider using a centralized CBC service.	55	46.2%
NO. Program would NOT consider using centralized CBC service.	23	19.3%
Not sure at this time.	41	34.5%