



**The standard credentialing process for Medical Staff applicants may not be adequate in revealing a criminal background. In this commentary Corporate Screening provides solid rationale for requiring criminal background checks on all applicants.**

## SUMMARY

Criminal background checks for physicians and other Medical Staff applicants appear to be the emerging state of the art of credentialing. Without question, information regarding an applicant's criminal background can provide an important perspective on the applicant's ability to provide quality care, exercise good judgment, maintain an ethical practice and otherwise comply with the various requirements of Medical Staff membership. Criminal background checks will not only protect patients, but they will also help the hospital defend itself from a negligent credentialing action.

**Corporate Screening Services, Inc. recommends that criminal background checks be included as a mandatory part of the credentialing process for Medical Staff applicants.** This white paper provides the rationale for this recommendation; a suggested process for adopting criminal background check standards, details about the process, and guidance on how to use criminal background check information in credentialing.

## RATIONALE

Physician staffing departments typically use two traditional sources for researching the criminal background of prospective physicians and other health care providers: the California Medical Board or State Licensing Agency and the Healthcare Integrity and Protection Databank (HIPDB). Each of these sources has limitations that render them unreliable in many instances.

The Medical Board expects to receive information about physician criminal conduct from multiple sources. California Business and Professions Code section Section 802.1 requires physicians to report criminal record information to the appropriate state board. Similarly, Business and Professions Code sections 803.5 and 803.6 require prosecuting attorneys, court clerks, and probation offices to report a physician's criminal record information to the appropriate state board.

Despite statutory obligations, many matters go unreported. While not intended to be an exhaustive list, the following are some recognized limitations of the State Medical Board Criminal Files:

- The record will go unreported unless law enforcement learns that the defendant is a physician.
- The state law requires only felony records to be reported which means that numerous other records will go unreported (Domestic abuse, theft, etc.)
- The state law requires prosecutors, court clerks, and probation officers to report felony records but there are no penalties for noncompliance.
- Reports by prosecutors, court clerks, and probation officers are typically made via hard copy and this labor intensive process has a tendency to deter the reporting entities from making reports.
- Informal interviews with reporting entities (prosecuting attorney's offices, courts) revealed that these entities focus mainly on reporting health care related offenses.

As a result of these limitations, it is recommended that Medical Staff departments require criminal background checks as part of the credentialing



Corporate Screening  
16530 Commerce Court  
Cleveland, Ohio 44130-6305  
Phone: (800) 229-8606  
Fax: (440) 243-4204  
Email: [Info@CorporateScreening.com](mailto:Info@CorporateScreening.com)  
Web: [www.CorporateScreening.com](http://www.CorporateScreening.com)

©Copyright 2007,  
Corporate Screening Services, Inc.

process for new members. These background checks should also include an evaluation of whether the individual is an excluded party as defined by the Department of Health and Human Services, Office of the Inspector General (OIG) and the General Services Administration (GSA). Extending the background check standards to Medical Staff applicants will allow the Medical Staff membership to obtain a more complete picture of the health care provider prior to offering privileges.

## MANAGING THE PROCESS

It is important to note that this process of using a third party (i.e., Corporate Screening or an equivalent agency) to conduct criminal background checks is governed by the federal Fair Credit Reporting Act (“FCRA”). The reports that are prepared by the vendor are considered a Consumer Report. The Federal Trade Commission has made clear that consumer reports conducted on “independent contractors” (i.e., physicians) are consumer reports for “employment purposes”. As a result, the process for Medical Staff applicants will be remarkably similar to that of employees. The FCRA requires that certain steps be followed if a criminal background check is conducted by a third party. If information from a third party report is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure/ authorization that a consumer report may be obtained.
- If any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer’s rights will be provided to the consumer.
- Shortly after providing a copy of the report (generally 2-3 days) a notice to the applicant advising that they are not being considered eligible for employment based on the background check conducted by the consumer reporting agency (Corporate Screening Services, Inc.) must be provided. This notice must include the name, address and phone of the consumer reporting agency as well as a summary of the consumer’s rights.

This notice must also advise the applicant that the consumer reporting agency did not make the hiring decision.

Additionally, several state have consumer reporting laws that may be more stringent than the FCRA.

## WHAT TO DO WITH WHAT WE LEARN

Certainly, each application for Medical Staff membership should inquire as to whether the applicant has ever been convicted of a crime, other than a minor traffic violation. However, even this question would not capture information relative to the filing of charges or plea bargains that did not result in a conviction. Also, depending on the interpretation of the question by the applicant, you may get a response relative to felony convictions but not misdemeanor convictions. Yet the latter can be highly relevant, as was the case with a local practitioner who was convicted of a misdemeanor arising from his inappropriate physical contact with a patient. Because the case involved only one patient, the practitioner was charged with a misdemeanor as opposed to a felony. Yet, in this case, once should have been enough to disqualify him from Medical Staff membership.

For most Medical Staffs, the biggest challenge relative to criminal background checks will be what to do with the information once you receive it. As with most credentialing information, there is no “canned” answer applicable to all. The information is clearly relevant to an assessment of the practitioner’s suitability for Medical Staff membership, but the impact it should have on the ultimate disposition of the application, depends on a variety of factors, including age and time of the offense, seriousness of the offense, the relationship between the



Corporate Screening  
16530 Commerce Court  
Cleveland, Ohio 44130-6305  
Phone: (800) 229-8606  
Fax: (440) 243-4204  
Email: [Info@CorporateScreening.com](mailto:Info@CorporateScreening.com)  
Web: [www.CorporateScreening.com](http://www.CorporateScreening.com)

©Copyright 2007,  
Corporate Screening Services, Inc.

conviction and the job, the nature and number of convictions and rehabilitation efforts.

Preliminarily, however, Medical Staffs should look first to see whether the practitioner has disclosed accurate and complete information in response to the carefully worded criminal history question in the application. If the practitioner failed to disclose relevant information or falsified information, that failure to disclose or the misrepresentation should, in and of itself, be grounds to deny the application.

All disclosures by the practitioner of prior criminal history should be researched. Based on the results of the researched criminal record, what impact, if any, will a felony or misdemeanor conviction have on the application? Many states contain health care laws that clearly define disqualifying offenses. Medical Staffs must take these laws into consideration when making decisions.

**NOTICE:** All information contained herein is strictly **confidential and proprietary** and must not be reproduced or otherwise disclosed to any person other than the intended recipient(s) without the express permission of Corporate Screening Services, Inc.



Corporate Screening  
16530 Commerce Court  
Cleveland, Ohio 44130-6305  
Phone: (800) 229-8606  
Fax: (440) 243-4204  
Email: [Info@CorporateScreening.com](mailto:Info@CorporateScreening.com)  
Web: [www.CorporateScreening.com](http://www.CorporateScreening.com)

©Copyright 2007,  
Corporate Screening Services, Inc.

Corporate Screening ([www.CorporateScreening.com](http://www.CorporateScreening.com)) is a nationally recognized provider of background screening solutions for some of the nation's top employers. As a leading investigative consultant to human resources and corporate security professionals, Corporate Screening combines state-of-the-art data gathering technology with in-depth examination and analysis to verify information and mitigate the risks associated with hiring employees. With offices in Cleveland, Tampa and Northern California, Corporate Screening utilizes a professional staff of information analysts and HR consultants to service the needs of hiring professionals representing a full spectrum of industries, with special emphasis on healthcare, financial services and manufacturing sectors.