

## **OBPE and Criminal Background Checks – A Brief History**

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The Board of Psychologist Examiners first became aware of a bill to grant health regulatory agencies the authority to conduct criminal background checks (CBCs) during the Oregon Legislative Session of 2005. Its executive director at the time, Martin Pittioni, first brought HB 2157 to the board's attention at a public session on 5/7/2005.

After the bill was introduced, support for it from several health regulatory agencies and the legislature grew quickly. Indeed, some legislators expressed concern that licensing agencies were not already conducting CBCs. These concerns were expressed directly to OBPE during its budget hearing by the legislative budget panel, which directed Mr. Pittioni to attend workgroups on the bill with the purpose of adding CBC authority to OBPE. The purpose of the workgroup was to provide a consistent framework for the authority to conduct background checks for all licensing boards. The resulting bill granted specific licensing boards the authority to conduct these checks on all licensees, not just applicants for licensure. The bill passed and amended ORS 675.110.

Subsequently, OBPE discussed its implementation at the board retreat on 11/17/05 and dutifully included it in its two year plan for administrative rule changes. After Mr. Pittioni left OBPE and Debra Orman McHugh arrived as Executive Director in fall 2006, she began work on promulgating rules to implement the law. She reported to the Board at her first meeting (9/29/06) that she had received model CBC rules developed by the Chiropractic Board, and based on model rules developed by the Oregon Department of Justice for DAS. At the 2/23/07 meeting Ms. Orman McHugh reported that the summer intern would be assigned this large project. On 7/20/07 a convocation of 30 licensed psychologists met in Salem to review all current OBPE administrative rules, and the proposed CBC rules (based on rules from all of the Oregon licensing agencies who had promulgated rules regarding CBCs). At the board retreat of 9/27/07 administrative rule changes were reviewed, including the addition of criminal background checks. The rules went out for public comment in early 2008. Many comments from licensees were critical of the CBC rule and some were volatile, many were favorable. Absent were comments from non-licensees.

At its meeting of 3/14/08 OBPE decided to pull the CBC from the OAR's that would go into effect in April 2008. Ms. Orman McHugh proposed "revamping the process including convening a group of licensees, consumers, and others to write draft rules for Board consideration." At the 06/27/08 meeting the Board reconsidered the idea of re-writing the CBC rules; however directed Ms. Orman McHugh to convene a feedback forum where licensees could express their opinions. After considering the efficacy of a forum in Salem (and the lack of participation and complaints about the location regarding a forum held earlier), Ms. Orman McHugh consulted with the Board Chair and two other Board members regarding the concept of "virtual forum." The sole purpose of the virtual forum was to give the greatest number of individuals the ability to provide direct feedback to the Board on the proposed background check rule without having to drive to Salem.

### **OTHER CONTRIBUTING FACTORS**

Three other developments during this period (2005-2008) have influenced the board's thinking about CBCs: 1) national discussions among licensing boards about assessing for character and fitness, 2) increasing mobility of psychologists across jurisdictions, and 3) OBPE's decision to replace an oral examination for licensure with a written exam.

1) The Association of State and Provincial Psychology Boards conference in Portland, Oregon, April 7-10, 2005, devoted itself to character and fitness issues. At this meeting several jurisdictions from the United States and Canada presented models for screening candidates for licensing which included obtaining criminal background information. The ASPPB legal counsel also reviewed cases where courts had ruled on the admissibility of CBCs and under what circumstances they could be used to deny licensure. For example, South Dakota's Board of Medical Examiners denied an applicant based upon prior felony convictions (forgery, obtaining a drivers license under false pretenses, obtaining property under false pretenses), which was upheld by the courts. At the same meeting several jurisdictions shared their applications for licensure which specifically asked about prior criminal convictions, as well as unethical conduct in prior employment or graduate training programs. This conference led to discussions on character and fitness at OBPE meetings and a review of ORS 675.030, which requires applicants to be of "good moral character" and which authorizes the Board to reference "acts or conduct that reflect moral turpitude or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, and respect for the rights of others *and for the laws of the state and the nation*" (italics added). OBPE raised the issue of character and fitness with licensees at the OPA Spring 2006 Town Hall in Portland.

2) Also during this period OBPE for the first time approved the Certificate of Professional Qualifications (CPQ) issued by ASPPB and the National Register Certificate as a means of qualifying for licensure in Oregon, thus allowing greater mobility of psychologists across jurisdictions. By this action OBPE joined the rest of the nation and Canada in recognizing that the practice of psychology is growing less provincial and more global. ASPPB emphasized that such mobility requires national checks on credentials and prior misconduct to prevent harmful psychologists from moving freely from one jurisdiction to another. In 2006 OBPE began reporting misconduct of its licensees to two national data banks (HIPDB and ASPPB) and uses these databases to screen candidates for Oregon licensure. However, neither databank collects information on criminal misconduct beyond what is reported by licensing boards.

3) Finally, during OBPE's deliberations about replacing its oral examination with a written test, the question arose about the board's ability to screen out unfit candidates without some form of face-to face interview. The transfer to a written exam moved forward with the realization that oral exams are not reliable procedures for assessing character or fitness. While CBCs never came up during these discussions, HB 2157 allowed the Board to consider another avenue for addressing character and fitness without having to conduct a screening interview. OBPE administered its last oral exam in October, 2007 and its first written exam in April, 2008.

## SUMMARY

Criminal background checks originated in the legislature as HB 2157 in 2005, with full support of the governor's office. While ORS 675.110 does not mandate licensing boards to conduct CBCs, failing to accept the authority to do so exposes boards to increased scrutiny regarding meeting its Legislative mandate of public protect, as well as criticism by both the legislature and the governor's office. Both branches made it clear that licensing boards should screen not only applicants but all licensees. This is already being done in other jurisdictions of psychology boards, and it is already being done for many other professions in Oregon, from chiropractors and nurses to teachers and child care workers. Criminal background checks are consistent with OBPE's existing statutes regarding character and fitness. They also anticipate the future of an increasingly mobile professional psychology which cannot be reliably screened by telephone interviews or written attestations.