

4729:5-18-03**Criminal records checks for office-based opioid treatment clinics.**

- (A) All criminal records checks conducted in accordance with this rule shall consist of both an Ohio bureau of criminal identification and investigation (BCI&I) records check and a federal bureau of investigations (FBI) records check.
- (B) Pursuant to section 4729.553 of the Revised Code, a terminal distributor of dangerous drug license with an office-based opioid treatment classification will not be issued until the physician owner(s) or, if incorporated, the physician officers of the office-based opioid treatment clinic submit fingerprints to BCI&I for a criminal records check. The results of the criminal records check must be sent directly to the state board of pharmacy from BCI&I. To be considered valid, the criminal records check must have been performed within the past twelve months.
- (C) If a waiver is requested pursuant to paragraph (B) of rule 4729:5-18-02 of the Administrative Code, a terminal distributor of dangerous drug license with an office-based opioid treatment classification will not be issued until the following submit fingerprints to BCI&I for a criminal records check:
- (1) Based upon the terminal distributor's business type:
 - (a) All partners of a partnership;
 - (b) The sole proprietor of a sole proprietorship;
 - (c) The president, vice president, secretary, treasurer, and chief executive officer, or any equivalent position of a corporation and, if a corporation is not publicly traded on a major stock exchange, each shareholder owning ten percent or more of the voting stock of the corporation; or
 - (d) The agency director of a government agency.
 - (2) The persons listed in paragraph (C)(1) of this rule shall be a natural person that owns and/or operates the business entity applying for licensure. In the event the applicant is not owned by a natural person, each business entity with an ownership interest in the applicant must be disclosed on the application up to and through the entity that is owned by a natural person, who shall be subject to a criminal records check in accordance with this rule.
 - (3) The results of the criminal records check must be sent directly to the state board of pharmacy from BCI&I. To be considered valid, the criminal records check must have been performed within the past twelve months.

(D) If there is a change in any of the persons listed in paragraphs (B) and (C) of this rule, only the new persons shall submit to a criminal records check as part of the change of ownership requirements pursuant to rule 4729:5-2-03 of the Administrative Code.

(E) Physician owner(s), physician officers or persons listed in paragraph (C)(1) of this rule are required to have all employees submit to a BCI&I and FBI criminal records check to ensure that a person is not employed by the clinic if the person, within the ten years immediately preceding the date the person applied for employment, was convicted of, or pleaded guilty to, a theft offense that would constitute a felony as described in division (K)(3) of section 2913.01 of the Revised Code or a felony drug abuse offense as defined in section 2925.01 of the Revised Code. The board may waive this requirement if a request is submitted in accordance with paragraph (F) of this rule.

(1) BCI&I shall send the results of the BCI&I criminal records check directly to the employer or potential employer. BCI&I shall provide a letter regarding the FBI criminal records check to the employer or potential employer stating that there is either no record of any conviction or a letter stating that the request may not meet the criteria.

(2) When an employer or potential employer receives a letter stating that the request may not meet the criteria, they may share this information with the employee or potential employee.

(3) In order to complete the criminal records check, the employee or potential employee must then complete a "Request for Release-FBI Rapsheet" and send it to BCI&I to request a copy of the FBI criminal records check results be sent directly to the employee or potential employee. The employee or potential employee must provide the results to the employer or potential employer in the original sealed envelope received from BCI&I.

(4) The criminal records check shall be based on electronic fingerprint impressions that are submitted directly to BCI&I from a WebCheck provider agency located in Ohio. The employer may accept the results of a criminal records check based on ink impressions from a WebCheck provider agency only in the event that readable electronic fingerprint impressions cannot be obtained.

(F) A waiver of the employment prohibitions in paragraph (E) of this rule may be granted by the board upon request of an applicant or current licensee.

(1) A waiver request shall be included as part of either:

- (a) The clinic's initial licensure application for a terminal distributor of dangerous drugs license with an office-based opioid treatment classification; or
 - (b) The submission of a separate form, approved by the board, for a currently licensed OBOT clinic.
- (2) The waiver request shall include all information, as deemed necessary by the board, to determine if it is in the public interest to waive the employment prohibitions set forth in paragraph (E) of this rule. The board reserves the right to request additional information from the applicant or licensee and the employee prior to rendering its decision.
- (3) If the board approves a waiver to paragraph (E) of this rule, the clinic shall retain the waiver until the employee is no longer employed by the clinic or the employment prohibition in paragraph (E) of this rule no longer applies.
- (4) An applicant or licensee whose waiver request is denied by the board will be provided with a written explanation of the denial and allowed one opportunity to resubmit its request to address the identified concerns. The resubmission of the request shall occur with sixty days of receiving the board's written explanation.
- (5) In determining whether to grant a waiver request, the board shall consider, at a minimum, all the following:
 - (a) The results of the employee's criminal records check conducted in accordance with this rule;
 - (b) A review of any past disciplinary actions taken against the employee that are based, in whole or in part, on the employee's inappropriate prescribing, personally furnishing, diverting, administering, storing, compounding, supplying or selling a controlled substance or other dangerous drug; and
 - (c) Commission of an act by the employee that constitutes a misdemeanor or felony in this state, regardless of the jurisdiction in which the act was committed.

Replaces: 4729-18-03

Effective: 3/1/2020

Five Year Review (FYR) Dates: 03/01/2025

CERTIFIED ELECTRONICALLY

Certification

12/06/2019

Date

Promulgated Under: 119.03

Statutory Authority: 4729.26, 4729.553

Rule Amplifies: 4729.51, 4729.54, 4729.55, 4729.541

Prior Effective Dates: 05/12/2017