



CRIMINAL BACKGROUND CHECKS FOR PHYSICIANS AND ALLIED HEALTH PROFESSIONALS

A GUIDE FOR HEALTHCARE ORGANIZATIONS



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FOREWORD

Today's healthcare organizations typically exercise great diligence in verifying the academic credentials and relevant experience of their physicians and allied health professionals before these individuals begin work. This scrutiny is well-founded, since their patients' health and even survival depend on rapid and accurate decisions by caregivers. To aid this process, a variety of organizations have evolved to assist in the credentialing effort.

Unfortunately, healthcare organizations are not always as diligent in checking the criminal backgrounds of those healthcare professionals. As the cases of Dr. Michael Swango and others illustrate, such an oversight can have devastating financial effects on hospitals and other organizations, and fatal results for patients. In fact, it is widely anticipated that the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) will recommend criminal background checks as part of the hiring process.

For some organizations, this is a new area. The businesses that have evolved to support the credentialing process are generally not well suited to the task, since criminal background checking requires professional expertise, legal knowledge, and specialized resources and techniques that are wholly unrelated to the verification of academic or work experience.

This guide was prepared by PreCheck, Inc. to help healthcare organizations navigate this area.

ABOUT PRECHECK

PreCheck was founded in 1983 to provide background investigation services for a diverse range of clients, and we have been concentrating on healthcare credentialing and program integrity since 1993. To our founding expertise in criminal background investigation, we have thus added a strategic focus on the specialized needs of hospitals, clinics and other healthcare providers. Today, we're providing a broad range of businesses and healthcare organizations with the information they need to verify and preserve the integrity of their people and programs.

For more information on criminal background checks in the healthcare setting, call us at 713-861-5959.



EXECUTIVE SUMMARY

Although the number of practicing physicians and allied health professionals who have a criminal background is small, the consequences of their actions can have a devastating impact on the organizations where they work. The routine performance of criminal background checks on these personnel can reduce the risk you incur in providing healthcare, bring you into compliance with emerging guidelines, and provide added peace of mind for your patients.

A variety of issues must be addressed in instituting this practice, including the resistance of some medical professionals, legal requirements of the Fair Credit Reporting Act, appropriate decision-making on what criminal activity constitutes a barrier to working at your institution, and others.

Organizations committed to due diligence in the effort to reduce their risk in the contracting and retention of responsible medical staff should:

- Engage a reputable organization with proven expertise in criminal background investigation to check the criminal background of professional healthcare providers.
- Ensure that the background check encompasses every location found on the individual's application. This includes the places where he or she lived, worked, studied, did their residency, etc.
- Ensure that either they or the background investigation company communicates directly with the hospitals where the physician has previously practiced. Sometimes a physician will have been under investigation or even been terminated without the institution notifying the state medical board that disciplinary action has been taken.
- If you have a suspicious physician in your facility, immediately involve the proper authorities if patients' well-being is in jeopardy. The peer review process was never designed to handle a criminal investigation.
- Ask questions if a healthcare professional has a significant gap in his or her work history. Some individuals may try to conceal a prior position that they were fired from by simply leaving it off their application; contact whomever is necessary to find out about lapses in work history.
- Create a well-defined written policy that requires that all physicians be subject to a criminal background check at appointment and reappointment, as well as a federal sanction screen through the National Healthcare Data Bank (NHDB) twice annually.



WHY PERFORM CRIMINAL BACKGROUND CHECKS ON PHYSICIANS AND ALLIED HEALTH PROFESSIONALS?

- 1. REDUCE YOUR RISK**
 - 2. CONFORM TO EXISTING AND EMERGING GUIDELINES**
 - 3. PROVIDE ADDED PEACE OF MIND FOR YOUR PATIENTS**
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REDUCE YOUR RISK

The most compelling reason to perform criminal background checks on healthcare workers is to reduce the risk your institution incurs in providing medical care. Physicians and allied health professionals typically enjoy—and deserve—a good reputation among the general public for the intelligence, hard work and dedication required to achieve and maintain their positions. However, intelligence, hard work and dedication are no proof against criminal intent.

While the overwhelming majority of healthcare professionals keep the best interests of their patients in mind, in today's litigious world it does not take more than a single case to create astronomical liability for a healthcare organization. There have been a number of such unfortunate cases, and a brief review of one of them dramatizes the inadequacy of the "business as usual" approach that can effectively permit criminal behavior.

The Swango case

On June 27, 1997, one of the most prolific serial killers in American history was arrested at Chicago's O'Hare airport while awaiting a flight out of the country. Dr. Michael Swango was subsequently convicted of murdering four people and is suspected of killing between thirty-five and sixty people in all. What is truly shocking about this case is that conspicuous failures of oversight occurred at a number of respected institutions, effectively enabling Dr. Swango to continue a criminal career that spanned more than 12 years.

The following table highlights the critical events and outcomes, vividly illustrating the number of points at which medical oversight failed; a more detailed summary of this case is included in the Appendix.



Failures of oversight in the Swango case

Events	Location	Results
Swango discovered fabricating patient reports while on OB/GYN rotation.	Southern Illinois Medical School	<p>Faced disciplinary board and forced to repeat course; lost residency offer from University of Iowa.</p> <p>Subsequently accepted into residency program at Ohio State University, which was not informed of his history.</p>
At least 8 patients expected to recover died suddenly while Swango was on duty; eyewitness accounts emerged.	Ohio State University	<p>Perfunctory investigation never interviewed physicians or nurses who responded to the emergency calls, nor did it speak to nurses who had observed suspicious behavior.</p> <p>Swango's privileges were reinstated, and he was transferred to a different wing of the hospital.</p>
After the transfer, 3 suspicious deaths occurred on Swango's watch.	Ohio State University	<p>Residency not renewed.</p> <p>Charges not pursued.</p> <p>The investigation was kept private, and Swango left with a glowing recommendation.</p>
Swango worked as EMT while awaiting Illinois medical license. After incidents of suspected poisoning, co-workers devised a trap that confirmed Swango tried to poison them with arsenic in a pitcher of iced tea.	Quincy, Illinois	<p>Police discovered a poison lab in Swango's apartment.</p> <p>Swango convicted of aggravated battery and sentenced to five years in prison.</p> <p>Swango released after serving two years, and moved to Virginia.</p>



Failures of oversight in the Swango case, continued

Events	Location	Results
<p>Swango forged a letter of pardon from the governor.</p> <p>He was accepted into a residency program at the University of South Dakota, alleging the battery conviction stemmed from a bar fight.</p>	University of South Dakota	<p>Swango resigned after his application for AMA membership revealed the true nature of his conviction.</p> <p>Swango left South Dakota before any disciplinary action was taken.</p> <p>Swango was accepted into a residency program at the State University of New York at Stony Brook. He did not mention his time in South Dakota, and again used the barroom fight to explain his criminal record.</p>
<p>Four patients expected to recover died suddenly under Swango's care, with one victim's wife witnessing an injection of "vitamins" by Swango.</p> <p>Parents of former fiancée who had committed suicide contacted the dean at the University of South Dakota, who informed the administration at Stony Brook.</p>	State University of New York at Stony Brook	Swango was fired and subsequently disappeared.
At least 12 patients under Swango's care died under mysterious circumstances.	Rural hospital in Zimbabwe	Charges were brought, but Swango fled the country when his conviction appeared likely.
Swango apprehended by FBI in Chicago while en route to a physician exchange program in Saudi Arabia.	Chicago, Illinois	<p>Conviction for forgery, practicing without a license.</p> <p>Charged in New York with three deaths and one battery; convicted and now serving a life sentence without parole.</p>



This record documents a conspicuous and deadly failure of credentialing and proper medical oversight at a number of institutions over a prolonged period. It also reflects the widespread reluctance of many in the healthcare community to speak out against a fellow professional, a significant obstacle that healthcare institutions must address. While such cases are infrequent, their consequences are clearly unacceptable.

A brief summary of liability issues

Many in the medical profession are reluctant to have their past investigated, but only rarely is something found by such a search that jeopardizes a career. Some physicians are opposed to criminal checks for understandable reasons: there was an incident in their past that they would rather forget, and above all would rather that no one else know about. Often in these cases, the physician has taken steps to ensure that whatever happened is kept secret to avoid embarrassment. In most instances, these crimes are not the type that would prevent reappointment or necessitate a disciplinary action: they are simply embarrassing and nothing more.

Nonetheless, it must be recognized that the refusal to perform or allow criminal background checks potentially enables certain individuals to continue a criminal career. Hospitals and other healthcare facilities can be held financially liable (in some states) for negligent credentialing if they allow a physician to join their medical staff despite potential concerns about his or her character. Making such a case “stick” in a court of law varies in difficulty from state to state: for instance, in Texas, the plaintiff must prove “malice” on the part of the credentialing department. (In this case, malice is defined as “a reckless disregard for the rights of others.”) Thus, in Texas, it must be proven that a credentialing department conclusively knew about flaws in the physician’s application, but chose to ignore them.

State laws and judicial decisions affecting the law can vary widely: contact PreCheck for a summary of legal rights and issues in your state.

CONFORM TO EXISTING AND EMERGING GUIDELINES

As the Swango case implies, criminal background checks are currently not uniformly required, although there appears to be a growing consensus on the topic. At the present time, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) does not require healthcare facilities to perform a criminal background check on their medical staff. However, it is quite likely that such a standard will be in place as early as 2007. Also, JCAHO in 2004 began requiring that positive identification of an incoming physician be established; one way to do this is to contract with a reputable background investigation service (JCAHO standard MS.4.10). And, according to a report posted on its website, the American Medical Association recognizes the importance of background checks.



Ultimately, regardless of the timing of recommendations or guidelines, healthcare facility management must address the issue of legal liability: If your institution were in a position where it would have to legally defend the decision to extend privileges to someone later proved to have a criminal record, it may not be sufficient defense to claim that you were “just following the existing standard.”

A background investigation policy that proactively protects the safety of your patients and the integrity of your facility is a must, especially with the many disturbing headlines about negligent and even homicidal healthcare professionals that have come to light in recent years. A truly trustworthy policy is one that takes a due diligence approach; the candidate is not allowed to progress in the credentialing process until all questions about his or her past have been satisfactorily answered. To leave any loose ends or possible leads unchecked is to compromise the integrity of the care your facility provides.

PROVIDE ADDED PEACE OF MIND FOR YOUR PATIENTS

In this age of instant information, news of lapses in credentialing cannot be ignored. They end up splashed on headlines in the newspaper, broadcast on television, and disseminated via the Internet. When patients find out that criminals have worked at a healthcare facility, the news drastically undermines their confidence in that facility. Thus, it is critical for the sake of your facility's reputation in your community that you be confident that there are no criminals on staff.

Many have offered as a reason for not performing criminal background checks that they don't need to know what their physicians do on “their time.” However, the alternative to this position is that you may eventually find out about problem doctors when the press calls you for your comments. By then, the damage done is nearly impossible to repair.

While it's only a small percentage of healthcare professionals who have something egregious in their criminal history (statistics show that 2.6% of physicians in practice today have been convicted of a felony*), the results of a single incident can be catastrophic. Obviously, institutions with a large medical staff are at proportionally greater risk: a hospital with a physician staff of 200 might have five physicians on staff who have a felony conviction on their records.

As headlines accumulate and stories multiply, patients are taking a more active role in investigating the quality of the care that they receive. Though many physicians oppose checks as an invasion of privacy, the personal risk of their past becoming very public knowledge is surely outweighed by the institution's risk in bringing on or retaining someone with a criminal record.

* Source: CBS News; April 15, 2002.



ISSUES IN PERFORMING CRIMINAL BACKGROUND CHECKS ON HEALTHCARE EMPLOYEES

- 1. THE FAIR CREDIT REPORTING ACT**
 - 2. BARRIER CRIMES**
 - 3. ONCE IS NOT ENOUGH**
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THE FAIR CREDIT REPORTING ACT

The Fair Credit Reporting Act (FCRA) was modified in 1997 to regulate the use of consumer reports. Under the FCRA, “consumer report” can refer to any number of different kinds of reports, including credit reports, driving records, employment reference checks, and criminal court records. The FCRA stipulates that a consumer report cannot be generated without prior written permission from the individual to be queried. Thus, compliance with the FCRA is a critical component of establishing a sound policy for performing criminal background checks.

Because of the risk of liability stemming from an incorrect report, the FCRA holds the consumer reporting agency responsible for the information contained in its reports. Healthcare facilities who extend privileges to an independent contractor physician, and who furnish information about that physician to a background investigation firm are immune from “any action or proceeding in the nature of defamation, invasion of privacy, or negligence...except as to false information furnished with malice or willful intent to injure the former employee.” Thus, if a physician’s privileges are terminated due to information found in the criminal history report, the hospital is shielded from any litigation that might be brought against it, provided that the hospital provided accurate information to the third-party consumer reporting agency.

The most critical element in initiating a criminal background report is the release form. As described above, you cannot legally perform a criminal background check on an individual without first receiving their permission *in writing*.

Additional information about rights and responsibilities under FCRA, including a sample release form, are included in the Appendix.

BARRIER CRIMES

“Barrier crimes” are those that are generally recognized as being sufficient in and of themselves that a record of conviction should in the overwhelming majority of cases preclude extending privileges to an individual. To help create a fair and consistent policy, PreCheck recommends that every healthcare facility that institutes criminal background checks establish a well-defined list of such barrier crimes. While opinions may differ on what constitutes a barrier crime, there are some crimes that should be regarded as unequivocal barriers to placing someone on your staff. A list of such crimes is included below; these should be regarded as a starting point only. The ultimate responsibility for establishing the list lies with the individual healthcare organization.

- Homicide - murder, manslaughter, negligent homicide, vehicular manslaughter
- Violent crimes, such as assault, robbery, aggravated assault, breaking and entering, battery
- Sexual crimes, such as sexual assault, sexual misconduct with a minor, prostitution
- Drug-related crimes, including drug trafficking, misuse of prescription privileges, possession with intent to distribute
- Domestic crimes - spousal abuse, child abuse, elder abuse
- Financial crimes, including embezzlement and fraud



Also, there are some crimes that in isolation may not represent a barrier, but which may constitute cause for concern if a repeated pattern has been established. These include:

- DUI/DWI
- Public intoxication
- Drug possession
- Theft by check
- Tax evasion

Obviously, this issue bears very careful consideration, but it is imperative that your organization maintain confidence in the integrity of your professional staff.

ONCE IS NOT ENOUGH

The chief concern that most hospitals have about criminals practicing medicine in their facility is that a new member of the staff might have a secret conviction that would jeopardize the integrity of the facility. However, some of the greatest threats can come from personnel who are already on staff, and have been there for a long time!

For this reason, PreCheck recommends performing a criminal check not only at initial appointment, but at reappointment as well. This way, your organization can confirm whether or not anyone has been charged with a crime since their appointment check and, more importantly, can maintain confidence in the individuals currently on staff *on a continuous basis*. Also, because a sanction can be imposed at any time, PreCheck recommends that a bi-annual federal sanction screening be performed in conjunction with the National Healthcare Data Bank (NHDB).

A recent case that PreCheck handled highlights this kind of scenario: a physician had been in practice at a hospital since the late 1970's. In the early '80's, he had been convicted of a sex-related crime, but received deferred adjudication, so no one found out about it at the time. (Or if they did, no one said anything.) In 2003, PreCheck ran a reappointment check on the physician and found the criminal record. Because of state law, after seven years, a conviction for which the defendant received deferred adjudication cannot be reported as part of PreCheck's report to the hospital. And if PreCheck is not allowed to report the offense, then the hospital cannot legally terminate the physician's privileges because of the offense. Therefore, because the doctor did a good job keeping his past hidden, he was able to continue practicing at the hospital. If reappointment checks had been performed, this physician's criminal history would have been discovered in the early '80's when something could be done about it, rather than later, when the statute of limitations protects him from termination.



A note on addressing the legal concerns of your staff

Many on your staff may object to the idea of performing a criminal background check as part of the credentialing process. Some do not want an embarrassing incident from their past to be brought to light. Some do not want to compromise the system of peer review. And others have convictions on their record that could not only prove embarrassing but could jeopardize their continued privileges at your facility.

To allay the concerns of those on your staff who are without a criminal record (or criminal intent), it must be made clear that:

- They are not the ones being targeted by these checks;
- Prudent risk management requires due diligence in staffing and appointment decisions;
- The cost of a failure in oversight can be compromised patient safety and nearly incalculable financial liability for the institution.



THE ELEMENTS OF A PROPER CRIMINAL BACKGROUND CHECK

- 1. INVESTIGATION—NOT SCREENING**
 - 2. SUFFICIENT SCOPE**
 - 3. SUMMARY**
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INVESTIGATION—NOT SCREENING

Many companies today offer background screening of potential employees, as well as physicians and other healthcare professionals. But what is the difference between screening and investigation?

A screening company typically uses a specific protocol when it searches for information about an applicant; anything not included in the protocol will not be discovered, researched or reported. For instance, if a physician who has been working in Indianapolis files an application to work in Miami, the typical screening company will perform a criminal check in Miami only, because that is what its contract requires. The screening company usually does not have a policy of following up on trails or leads, and so would miss any criminal behavior that occurred in Indianapolis.

Investigation companies like PreCheck do just that: they investigate. No file is closed until all questions have been answered to full satisfaction, and no lead is left untouched. And in only a very few of these companies do all members of the investigative staff hold a state private investigator's license (as is the case at PreCheck). The healthcare facility that contracts with PreCheck is notified when questions arise about an application, and when additional efforts are needed to pursue them adequately. In the example above, the facility would be notified that there is a need to check criminal records in Indiana, and if something is found there that indicates another criminal record elsewhere (like registration with an Indiana parole officer, though no Indiana records exist) those would be followed as well.

Many hospitals rely on the fact that a physician has a background check performed upon application for a medical license. However, the reports generated by the medical board's check are often incomplete. First, that report covers only what would have been on the physician's record before licensure; if they have been practicing medicine in the same state for twenty years, those are twenty years which the report does not cover.

Second, there is no comprehensive national criminal database available to the public, and so the medical board has a limited amount of information available. Without checking county courthouse records in each county where the physician has lived, worked, or studied, it is very difficult to be confident in the results of a criminal search. Once again, this highlights the need for a true investigation company to handle criminal background checks.

Finally, the standard that your organization can be held to is that of due diligence and good faith. If an effort is made to pursue all leads in a satisfactory way, then you can be confident that you're doing all that is possible to control your liability.



SUFFICIENT SCOPE

To be thorough, a criminal background investigation must have an appropriate geographic and chronologic scope. It must search all areas where the individual has lived, worked and studied, must reach back at least to the beginning of professional training and practice, and should be repeated on a routine basis.

It must also cross jurisdictional lines, from the county to the state to federal and even international records. Unfortunately, there is no national or international criminal database that compiles local crimes into a single resource, meaning that the records from a single criminal can be dispersed across multiple locations.

Federal screening can be of particular concern, because the experience of background investigation companies suggests that physicians are more likely to have federal charges filed against them than other workers. Individual who have had charges filed against them in a federal court are suspected of violating a federal statute. It is possible to break a federal law without breaking any state or local laws, and vice versa. Thus, if a physician has committed an offense such as tax evasion, there will be no record of it at a local or state level, but it can be found as part of a federal search. While an arrest for tax evasion may not be a charge that you would deny privileges for, consider the two offenses most commonly found on physicians' federal criminal records: Medicare fraud and abuse of DEA drug privileges. While an arrest for one of these offenses *should* land a doctor on the list of sanctioned individuals maintained by the Office of Inspector General of the Department of Health and Human Services, it sometimes does not.

People can be quite adept at finding ways to keep career-jeopardizing events hidden, even from a so-called comprehensive database. Whether an individual has been sanctioned or not, it is ill-advised to have someone on staff at your facility who has a history of disregarding federal regulations.



A SUMMARY

The organization committed to due diligence in the effort to reduce its risk in the search for and retention of responsible medical staff should:

- Engage a reputable organization with proven expertise in criminal background investigation to check the criminal background of professional healthcare providers.
- Ensure that the background check encompasses every location found on the individual's application. This includes the places where he or she lived, worked, studied, did their residency, etc.
- Ensure that either they or the background investigation company communicates directly with the hospitals where the physician has previously practiced. Sometimes a physician will have been under investigation or even been terminated without the institution notifying the state medical board that disciplinary action has been taken. Some hospitals are reluctant to share such information, but the potential consequences outweigh this concern.
- If you have a suspicious physician in your facility, immediately involve the proper authorities if patients' well-being is in jeopardy. The peer review process was never designed to handle a criminal investigation.
- Ask questions if a healthcare professional has a significant gap in his or her work history. In Dr. Swango's case, he had a two-year lapse in employment when he was in prison. Some individuals may try to conceal a prior position that they were fired from by simply leaving it off their application; contact whomever is necessary to find out about lapses in work history.



APPENDICES

- 1. FAIR CREDIT REPORTING ACT**
 - 2. LEGAL DOCUMENTS ABOUT NEGLIGENT CREDENTIALING**
 - 3. MORE ON THE SWANGO CASE**
 - 4. SOME OPTIONS FOR IDENTITY VERIFICATION**
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FAIR CREDIT REPORTING ACT

Obligations of users

Notice to users of consumer reports: Obligations of users under the FCRA

The Federal Fair Credit Reporting Act (FCRA) requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. This first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. The FCRA, 15 U.S.C. 1681-1681u, is set forth in full at the Federal Trade Commission's Internet web site (<http://www.ftc.gov>).

I. Obligations of all Users of Consumer Reports

A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 of the FCRA contains a list of the permissible purposes under the law. These are:

- As ordered by a court or a federal grand jury subpoena. *Section 604(a)(1)*
- As instructed by the consumer in writing. *Section 604(a)(2)*
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. *Section 604(a)(3)(A)*
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. *Sections 604(a)(3)(B) and 604(b)*
- For the underwriting of insurance as a result of an application from a consumer. *Section 604(a)(3)(C)*
- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. *Section 604(a)(3)(F)(i)*
- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. *Section 604(a)(3)(F)(ii)*
- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. *Section 604(a)(3)(D)*
- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. *Section 604(a)(3)(E)*
- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. *Sections 604(a)(4) and 604(a)(5)*

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making unsolicited offers of credit or insurance. The particular obligations of users of this "prescreened" information are described in Section V below.



B. Users Must Provide Certifications

Section 604(f) of the FCRA prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA (by a general or specific certification, as appropriate) the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term “adverse action” is defined very broadly by Section 603 of the FCRA. “Adverse actions” include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact—such as unfavorably changing credit or contract terms or conditions, denying or canceling credit or insurance, offering credit on less favorable terms than requested, or denying employment or promotion.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action that is based at least in part on information contained in a consumer report, the user is required by Section 615(a) of the FCRA to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.

- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.

- A statement setting forth the consumer’s right to obtain a free disclosure of the consumer’s file from the CRA if the consumer requests the report within 60 days.

- A statement setting forth the consumer’s right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) of the FCRA requires that the user clearly and accurately disclose to the consumer his or her right to obtain disclosure of the nature of the information that was relied upon by making a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer’s written request.



3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notification must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. (Information that is obtained directly from an affiliated entity relating solely to its transactions or experiences with the consumer, and information from a consumer report obtained from an affiliate are not covered by Section 615(b)(2).)

II. Obligations of Users when Consumer Reports are Obtained for Employment Purposes

If information from a CRA 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, that a consumer report may be obtained.

Obtain prior written authorization from the consumer.

Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, 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.

Before taking an adverse action, provide a copy of the report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA, because Section 604(b)(1)(B) of the FCRA requires CRAs to provide a copy of the summary with each consumer report obtained for employment purposes.)

III. Obligations of Users of Investigative Consumer Reports

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 of the FCRA requires the following:



The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and must include the summary of consumer rights required by Section 609 of the FCRA. (The user should be able to obtain a copy of the notice of consumer rights from the CRA that provided the consumer report.)

The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.

Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation that was requested. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

IV. Obligations of Users of Consumer Reports Containing Medical Information

Section 604(g) of the FCRA prohibits consumer reporting agencies from providing consumer reports that contain medical information for employment purposes, or in connection with credit or insurance transactions, without the specific prior consent of the consumer who is the subject of the report. In the case of medical information being sought for employment purposes, the consumer must explicitly consent to the release of the medical information in addition to authorizing the obtaining of a consumer report generally.



V. Obligations of Users of "Prescreened" Lists

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603(l), 604(c), 604(e), and 615(d) This practice is known as "prescreening" and typically involves obtaining a list of consumers from a CRA who meet certain preestablished criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

Information contained in a consumer's CRA file was used in connection with the transaction.

The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.

Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.

The consumer may prohibit the use of information in his or her file in connection with future pre-screened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. This statement must include the address and toll-free telephone number of the appropriate notification system.

VI. Obligations of Resellers

Section 607(e) of the FCRA requires any person who obtains a consumer report for resale to take the following steps:

Disclose the identity of the end-user to the source CRA.

Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.

Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:

- (1) the identity of all end-users;
- (2) certifications from all users of each purpose for which reports will be used;
- and
- (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.



VII. Liability for Violations of the FCRA

Failure to comply with the FCRA can result in state or federal enforcement actions, as well as private lawsuits. *Sections 616, 617, and 621*. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. *Section 619*

Significance of a “consumer reporting agency”

“Applicants are often asked to give references. Whether verifying such references is covered by the FCRA depends on who does the verification. A reference verified by the employer is not covered by the Act; a reference verified by an employment or reference checking agency (or other CRA) is covered. Section 603(o) provides special procedures for reference checking; otherwise, checking references may constitute an investigative consumer report subject to additional FCRA requirements.” (From the FTC files.)

Note: The following reflects PreCheck’s operations; it may not be accurate for other organizations.

PreCheck is a “consumer reporting agency” operating under the legal authority of the federal Fair Credit Reporting Act (FCRA). This is very important because it provides employers the ability to share information on former employees through a third-party reporting agency such as PreCheck.

Under the FCRA, employers who furnish such information are immune from “any action or proceeding in the nature of defamation, invasion of privacy, or negligence... except as to false information furnished with malice or willful intent to injure the former employee.”

PreCheck accepts full responsibility for ensuring that all of our practices and policies are fully compliant with the requirements of the Fair Credit Reporting Act, thereby maintaining our clients’ protection. We back this responsibility with professional Liability, and Errors and Omissions Insurance.



Sample release form



Credentialing and
background investigation

PHYSICIAN DISCLOSURE & RELEASE

APPLICANT'S FULL NAME _____

Any Other Names Used _____

Social Security No. ____ / ____ / ____ Date of Birth¹ _____

Current Address _____

City _____ State _____ Zip _____

Driver's License State _____ No. _____

Please provide all locations where you have resided or practiced for the past ten (10) years, starting with your current residency.

City	State	Dates From:	To:
1. _____ / _____	_____	_____	_____
2. _____ / _____	_____	_____	_____
3. _____ / _____	_____	_____	_____
4. _____ / _____	_____	_____	_____
5. _____ / _____	_____	_____	_____
6. _____ / _____	_____	_____	_____
7. _____ / _____	_____	_____	_____
8. _____ / _____	_____	_____	_____

Pursuant to the requirements of the Fair Credit Reporting Act, I **acknowledge that a credit report, consumer report² and/or investigative consumer report³ may be made in connection with my application for employment, contract or privileges with the respective facility.** I understand that these investigative background inquiries may include credit, consumer, criminal, driving, prior employment and other reports. These reports may include information as to my character, work habits performance and experience, along with reasons for termination of past employment from previous employers. Further, I understand that the respective facility and PreCheck, Inc. may be requesting information from various federal, state, and other agencies which maintain records concerning my past activities relating to my educational/school records, driving, credit, criminal, civil and other experiences, as well as claims involving me in the files of insurance companies.

I authorize, without reservation, any party or agency contacted by PreCheck, Inc. to furnish the information mentioned above. A photocopy of this authorization shall have the same effect as the original.

I understand the information obtained will be used as one basis for employment, contract or privileges or their denial. I hereby discharge, release and indemnify the respective facility, PreCheck, Inc., their agents, servants and employees, and all parties that rely on this release and/or the information obtained with this release from any and all liability and claims arising by reason of the use of this release and dissemination of information that is false and untrue if obtained from a third party without verification.

It is expressly understood that the information obtained through the use of this release will not be verified by PreCheck, Inc. The authorization granted herein shall be effective throughout the term of my employment, contract or privileges.

I have read and understood the above information, and assert that all information provided by me is true and accurate.

Signature _____ **Date** _____

Upon your written request within a reasonable period of time, the investigative agency compiling a report will make a complete and accurate disclosure of the nature and scope of the investigation. In addition, if you are denied employment, contract or privileges either wholly or partly because of information contained in a consumer report, a disclosure will be made to you of the name and address of the investigative agency making such a report.

¹ The Age Discrimination in Employment Act of 1987 prohibits discrimination on the basis of age with respect to individuals who are at least 40 years of age. This information is for consumer report purposes only.

² A "Consumer Report" may consist of employment records, educational verification, licensure verification, driving record, previous address and public records relative to criminal charges.

³ An "Investigative Consumer Report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with persons having knowledge.

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PR-Physician(0510)



LEGAL DOCUMENTS ABOUT NEGLIGENT CREDENTIALING

Legal precedents in this area vary by jurisdiction. Contact PreCheck for a summary of legal case histories in your state.

MORE ON THE SWANGO CASE

Note: The following summary was compiled on the basis of John B. Stewart's *The Blind Eye: The Terrifying Story of a Doctor Who Got Away with Murder*, as well as information available from CourtTV.com (found at: www.courtstv.com/onair/shows/mugshots/episodes/swango.html).

On June 27, 1997, one of the most prolific serial killers in American history was arrested at Chicago's O'Hare airport while awaiting a flight out of the country. Michael Swango was subsequently convicted of murdering four people and is suspected of killing between thirty-five and sixty people in all. What is truly shocking about this case is that Swango was a licensed physician, and all those who were killed were patients under his care.

Swango's ability to keep killing, long after concerns had arisen about the care that he was providing to patients, was dependent on the unwillingness of the medical staff to speak against one of their own, and poor communication between healthcare facilities where he practiced. His case is an example, albeit an extreme one, of what can happen when a thorough background check is not part of the credentialing process.

The story of Dr. Michael Swango begins at Southern Illinois Medical School. Swango had enrolled there in 1979 after completing an undergraduate degree at Quincy College in Quincy, Illinois. Early on in his medical education, two concerns about Swango became apparent: First, he had horrible study habits and did not seem to take his education seriously. Second, he seemed unusually preoccupied with violent death and accidents. When he began rotations, it was noted that he had a very poor bedside manner and was often brusque with patients and nurses. He seemed pleased to learn that patients in his department had died.

The first sign that Swango was not what he seemed arose while he was on an OB/GYN rotation. It was discovered that he had been fabricating patient reports, either by making them up entirely or by plagiarism. He was brought before the medical school's disciplinary board and told that he would have to repeat the course, and the offer for a residency that he had received from the University of Iowa was rescinded. Swango repeated the course, and was accepted into a residency program at Ohio State University, but the school was not informed of the difficulties Swango had while at Southern Illinois.



While at Ohio State, Swango was perceived as rude and condescending to patients, but was considered a good doctor. However, it was at this time that his homicidal tendencies first came to light. On the night of January 31, 1984, Swango entered the room of Ruth Barrick for an after-hours check on her IV. Almost as soon as Swango exited the room, Barrick had turned blue and begun suffocating. Barrick was transferred to the ICU, and on February 6, Swango again visited her room. Once again, after Swango left her room, she stopped breathing and turned blue. This time, Barrick did not recover. Nurse Anne Ritchie had observed the second incident, though she had been ordered out of the room by Swango and did not directly observe what he did to Barrick. Ritchie became concerned about Swango, and soon other incidents came to light that only confirmed her suspicions.

Swango was also connected with a sudden change in the condition of patient Rena Cooper. Cooper was in the hospital following back surgery when she says Swango injected something into her IV during the night. Cooper said that whatever it was, it had paralyzed her and made breathing difficult. She was able to make a full recovery, but she made a report of the incident to the nurse who had been attending her. She described how a tall, blond man had come into her room and administered an injection that left her unable to speak and barely able to breathe.

When eyewitnesses began to report on Swango's role in the Cooper and Barrick cases, more possible poisonings were pinpointed. Seven other patients who had been doing well and were expected to recover had all died suddenly while Swango was on duty. This circumstantial evidence, combined with the firsthand accounts of Cooper and Ritchie, should have been enough to make a case for Swango's dismissal.

It was at this point where the system failed. When Ohio State began an inquiry into Swango's behavior, it quickly became apparent that the university's primary interest was in conducting the investigation in such a way that Swango would not be inclined to bring a defamation lawsuit against the university. Doctor Joseph Goodman's investigation was perfunctory at best, and dangerously negligent at worst—never interviewed any doctors or nurses who responded to the emergency calls, never spoke to the nurses who had observed Swango's suspicious behavior. Also hampering the investigation was the belief on the part of the physician peer review board that the charges against Swango were partly brought by a group of nurses who had some sort of vendetta against Swango. The nurses' opinions were largely dismissed as evidence in the investigation.

The result of the investigation was the reinstatement of Swango's privileges and his transfer to a different wing of the hospital. Almost as soon as he was back on rotation, three more suspicious deaths occurred on Swango's watch. When Swango's residency came up for review in June of 1984, it was decided that it would not be renewed and Swango left Ohio State. However, the charges against Swango were not pursued any further after he left. Never in the course of the proceedings had the local police or anyone outside the university been involved. The investigation was kept private, and the university made no mention of it. In fact, he left with a glowing recommendation and an Ohio medical license!



Swango moved back to his hometown of Quincy, Illinois and began working at an ambulance service as an EMT while he awaited his Illinois medical license. His co-workers found him to be distant and strange, and noted his excitement whenever they received a call to go to the scene of a violent accident. They also noticed that whenever Swango brought food to work to share with them, people would subsequently become very ill, with days of vomiting and severe dehydration. Finally, they laid a trap for him—they set out a pitcher of iced tea in a room where Swango was alone. After Swango left the room, they collected the tea and had it analyzed by a crime lab. It tested positive for arsenic. Police obtained a search warrant, and found a poison laboratory in Swango's apartment. Swango was arrested on seven charges of aggravated battery for the non-fatal poisonings of his co-workers. After a trial in which the past investigation at Ohio State was brought up as evidence against him, Swango was convicted and sentenced to five years in prison.

Swango served two years of his sentence and was released in 1987. He moved to Virginia and attempted to obtain a Virginia medical license. He was denied. While there, he forged a pardon from the governor of Virginia that he would later use as proof that his criminal record had been expunged. Also, he met a nurse by the name of Kristen Kinney and became engaged to her. When he was called for an interview by the University of South Dakota, Sioux Falls, he told his interviewer that the conviction for battery stemmed from a bar fight and that he had been pardoned. He was accepted into the residency program at the university and he and Kinney moved to South Dakota together. The university never contacted the authorities in Illinois, and took Swango's account of his past to be true.

For a while, it seemed that Swango had finally settled down. It wasn't until he foolishly applied for membership in the American Medical Association that his ruse was discovered. The AMA discovered his poisoning conviction during its screening process, and immediately informed the University of South Dakota. Swango was placed on leave while the accusations were confirmed. About this time, Kinney began having headaches and nausea that were similar to the symptoms experienced by Swango's victims at the ambulance service. Distraught by the charges against Swango and in failing health, Kinney moved back to Virginia, and committed suicide soon thereafter.

Swango resigned and departed South Dakota before any disciplinary action was taken. He was accepted into the residency program at the State University of New York-Stony Brook. He did not mention his time in South Dakota, and again used the barroom fight excuse to explain his criminal record. Soon after he began practicing, old patterns began to surface. Four patients under Swango's care who were expected to recover died suddenly. One case in particular was striking—that of Barron Harris, who had been admitted for pneumonia. While he was recovering, Harris' wife observed Swango injecting something into her husband's neck. When she asked what it was, Swango told her "vitamins." Her husband lapsed into a coma and was placed on a respirator. Harris never came out of the coma.



Kristen Kinney's parents found out through a friend of hers with whom she had worked in South Dakota that Swango had moved to New York and was working at SUNY-Stony Brook. Horrified, they contacted the dean at the University of South Dakota, who then informed the administration in New York of the charges against Swango. Swango was fired and went on the lam. He was found to be living in Atlanta, but left the country before the FBI could apprehend him.

Swango had fled to Zimbabwe in 1994, and he took a position at a rural hospital there. There his murderous ways continued, unimpeded by his past in the U.S. More than a dozen patients under his care died in mysterious circumstances. Charges were brought against him, and he made an attempt to make a defense. However, when it became apparent that he would be convicted, he fled the country. After more than a year abroad, he was apprehended by the FBI in Chicago while on his way to a doctor exchange program in Saudi Arabia.

Swango was convicted initially of forgery and practicing medicine without a license and was imprisoned while the case was compiled for murder. He was charged in New York with three deaths, and with battery in the death of Barron Harris. Evidence was brought that showed his connection with numerous other deaths dating back to his time at Ohio State. He pled guilty to the murders in October 2000 as part of a plea bargain, and is now serving a life sentence without the possibility of parole.

SOME OPTIONS FOR IDENTITY VERIFICATION

Verifying that applicants are in fact who they say they are should be a fundamental part of the credentialing process, and has been mandated by JCAHO in its 2004 standards. The February, 2004 edition of *Credentialing & Peer Review Legal Insider* (published by Brownstone Publishers, and sponsored by the National Association Medical Staff Services) presents a useful set of options for accomplishing this task. These approaches offer varying degrees of protection against identity theft, and some are specifically targeted at preventing the theft of identity from a deceased person.

In order of increasing reliability, these options are:

- Search death records through the Federation of State Medical Boards (FSMB).
- Search the "Master Death File" maintained by the Social Security Administration.
- Take photos of applicants, and confirm identity with the applicant's school, licensing boards, previous employers or professional organizations of which the applicant was a member.
- Perform a credit check and criminal background check.
- Engage the services of a company with the appropriate expertise to uncover identity theft.
- Employ biometric measures, such as retinal scans or fingerprints.

Contact PreCheck for a free copy of the entire article from *Credentialing & Peer Review Legal Insider*.



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