

Licensure of Applicants with a Criminal History

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I. PURPOSE

To provide a consistent ruling on applicants who have criminal history. The policy is to be used when processing license application. The goal of the policy is to make certain that all licensed physical therapists and physical therapist assistants are safe to work with the public.

II. ABBREVIATIONS

ARC – Application Review Committee

LPTB – Louisiana Physical Therapy Board

RPTP – Recovering Physical Therapy Program

III. AUTHORIZED PERSONNEL

Authority to view criminal history records is limited to the following individuals:

1) The Executive Director

The Executive Director provides final approval for the issuance of licenses, if the qualifications for licensure are met (Rule §175.A).

2) Assistant Executive Director

The Assistant Executive Director may view results of criminal background checks, as needed in order to continue the licensing process.

3) Designated Mail Processor

To provide adequate controls in the office, the Legislative Auditor recommends that a designated mail processor be assigned with processing mail who is not involved with accounts payable or receivables.

4) Licensing Analyst

The Licensing Analyst's primary responsibility is processing the license application, which includes criminal background check information as a requirement (Rule §151). The Licensing Analyst is also the designated Noncriminal Agency Coordinator (NAC), consistent with all requirements in LSP's Guide for Noncriminal Justice Agencies. The NAC will also be responsible for ensuring the completion of Security Awareness Training for all authorized personnel.

5) Attorney(s)

An attorney may be consulted to provide legal guidance related to criminal history of an applicant or of a licensee, when necessary, to ensure that the laws are followed appropriately and due process is provided.

6) RPTP Manager

The RPTP Manager may be consulted to provide guidance related to criminal history of an applicant or licensee, as needed, to ensure that the laws are followed appropriately and that due process is provided.

7) Board Member

When an applicant's qualifications for licensure prescribed by Rule §129, are not clearly met, one or more board members may be consulted prior to determining that a license shall be issued to an applicant (Rule §175.A).

8) Contracted Information Technology Company (IT)

IT may work on machines that provide access to sensitive information and provides protection and support for the Board's Network infrastructure.

IV. LEGAL AUTHORITY

The LPTB was created "for the purpose of protecting the public health, safety and welfare and to provide for state administrative control, supervision, licensing, and regulation of the practice of physical therapy in Louisiana." (La R.S. 37:2402). Pursuant to La R.S. 37:2420.A.(5), as further defined by Rules §351 and §345.B.12, the LPTB may deny, restrict, suspend, or revoke any license when a licensee is found to have been habitually intemperate or abused controlled dangerous substances as defined by federal or Louisiana law. In accordance with Rule §345.B.12., "if the LPTB receives apparently reliable information [...] which information on report puts in question the licensee or applicant's current fitness and ability to practice physical therapy with reasonable skill and safety to patients, the licensee or applicant shall submit to such physical, mental examination, evaluation, test, or drug/alcohol screen as requested by the executive director to determine the licensee or applicants fitness and ability to practice physical therapy with reasonable skill and safety to patients. The LPTB may require that an applicant or licensee enter into the Recovering Physical Therapy Program as specified in LPTB Rule (LAC 46: LIV §353-363. LPTB Rule (LAC 46: LIV §345.B.8) authorizes the board to consider taking appropriation action, including the authority to deny, suspend, revoke or take such other action against a licensee, if the licensee or applicant has been found to have engaged "in conduct which results in an arrest and the initiation of criminal prosecution, even if criminal charges are eventually lessened or dropped when the conduct leading the arrest can be verified and constitutes behavior which could put the person or property of patients at risk of harm from a treating licensee. Furthermore, the board has the authority to deny, suspend, revoke or take any action against a

licensee, if the licensee is “convicted” of any crime or entry of a plea of guilty or nolo contendere to any criminal charge arising out of or related to the practice of physical therapy. §345. B7 In order to determine an applicant’s suitability for licensing, the board may require applicants for initial licensure to furnish a full set of fingerprints to facilitate a criminal background investigation.” (La R.S. 37:2413. B). Public Law 92-544 gives authority to the FBI to conduct criminal background checks for noncriminal justice licensing or employments purposes.

V. PROCEDURES

- 1) Applicants for initial licensure shall furnish proof that a full set of fingerprints, other identifying information required, and Authorization and Rap Disclosure forms directly to the Louisiana State Police Department including all applicable fees to be processed through the Federal Bureau of Investigation for a national and state criminal history background check through the Louisiana State Police Department.
- 2) If the applicant has no criminal history, a report is emailed to the Licensing Analyst and Executive Director. If an applicant has criminal history, a report is mailed to the LPTB office.
- 3) The board has authorized the Executive Director or their designated LPTB staff member to approve licenses of individuals who have no criminal history and meet all other requirements for licensure, prescribed by Rule 129.
- 4) All hardcopy information regarding an applicant’s criminal background check is to remain under lock and key within the Licensing Analyst’s office which is clearly marked as ‘Authorized Personnel Only’. This office is to be locked at the end of each day. The only other individuals from the Authorized Personnel list who are to have access to this office are the Executive Director and the Assistant Executive Director.
- 5) For results with no criminal background, the Licensing Analyst will make note of the confirmation number and update the applicant’s licensure checklist accordingly. The email confirmation from LSP will be deleted and not maintained in either digital or paper form, in accordance with LSP’s Guidelines for Noncriminal Justice Agencies.
- 6) For background checks which result in arrest and/or convictions, the Licensing Analyst will maintain the paper report for the duration of the licensing process. Once licensed, the Licensing Analyst will shred the paper report before disposal.

Should the application not result in licensure, the results will be destroyed upon the final closure of the application.

- 7) Once any machine or electronic equipment utilized by the Licensing Analyst or any other authorized personnel to view criminal background check reports is no longer in use, IT is authorized to sanitize and/or destroy equipment consistent with the LPTB's sanitization policy.
- 8) For all records of arrests and convictions, the Licensing Analyst shall request a personal statement from the applicant, including the arrest/conviction date, arrest/conviction agency, parish, charges, identifying numbers, final disposition paperwork, evidence of completion of any type of program required by the courts, past convictions and certified court documents and other legal documentation, including final disposition and evidence of completion of any programs. Provide a fourteen (14) day deadline for response. Failure of applicant to respond by the deadline will result in an incomplete application. Court disposition documents must come directly from the court.
- 9) For arrest or convictions involving alcohol or other substance abuse, request a review of the court documents and personal statement by the RPTP Manager as a substance abuse expert recommendation.
- 10) The Executive Director and one board member will review the application and supporting documentation and any recommendations received by the RPTP Manager to determine the most appropriate course of action. They may consult with legal counsel if necessary or appropriate.
- 11) Once the license is issued, the criminal history record provided by the state police is destroyed. Hard copy criminal history record rap sheets are shredded. The electronic version of the report is permanently deleted from both the email of the Executive Director and the Licensing Analyst. Any and all state or national criminal history record information obtained by the LPTB from the bureau or FBI which is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, investigators, agents, and attorneys in evaluating the applicant's eligibility or qualification for licensure. No such information or records shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

12) License applications are valid for one year of inactivity. After one year of inactivity, license applications are destroyed. Applicants who previously applied for license with the LPTB and whose application was destroyed after one year of inactivity must complete a new application, including a new background check.

Table 1.1 Conviction Record Guidelines for Licensure Applicants

Bad Checks, Municipal Ordinances		
# Convictions	Cleared By Staff	Referred for Review
One or More	X	
Misdemeanors (excluding DUI, Substance-Related offenses)		
# Convictions	Cleared By Staff	Referred for Review
One	X	
More than One		X
DUI/DWI/Other Substance-Related Charges		
# Convictions	Cleared By Staff	Referred for Review
One	X	
More than One		X
Felony Offenses		
# Convictions	Cleared By Staff	Referred for Review
One or more		X

Table 1.1 EXCEPTIONS:

- 1) Arrests related to verifiable conduct that constitutes behavior which could put the person or property of patients at risk of harm will be referred to the ARC prior to staff clearing applicant.
- 2) Arrests for a single DUI charge, when the DUI charge is the only concerning charge, will not be considered without a conviction.
- 3) In the event staff is uncomfortable with a clearable conviction, staff will refer to the ARC for review.
- 4) Re-instatement applicants who were previously revoked or voluntarily surrendered their license require a hearing before the board.
- 5) Applications that are questionable or when a letter of explanation is inconsistent with other facts known by the LPTB staff, applications will be referred to the ARC.
- 6) When criminal court-ordered probation is still in effect, applications will be referred to the ARC.

Disclaimer: This is meant to be a guide; decisions can be made by ARC at the discretion of the board.

Table 1.2 CRIMINAL OFFENSES

For all crimes in all sections: Pled guilty, nolo contendere, “best interest of”, convicted of committing, attempted to commit, conspiring to commit.

A	B	C
Denial (permanent)	Denial (Minimum 5 years)	Delay
<p>Crimes of Violence as defined in La R.S. 14:2. http://www.legis.la.gov/Legis/Law.aspx?d=78337</p> <p>Or any of the following: false imprisonment offender armed with dangerous weapon, cruelty to the infirmed, cruelty to animals, or equivalent crimes in a jurisdiction other than La.</p>	<p>Felonious crimes which reflect an inability to practice physical therapy safely with due regard for the health and safety of clients or patients not previously mentioned under section A.</p>	<p>Pending criminal charge involving violence or danger to another person: crimes which constitute a threat to patient care, crimes involving production, manufacturing, or dispensing of drugs.</p>
<p>Crimes involving the production, manufacturing, distribution or dispensing of controlled dangerous substances.</p>	<p>Two or more misdemeanor crimes which reflect an inability to practice physical therapy safely, including but not limited to, simple battery, aggravated assault, sexual battery, criminal mischief, entry on or remaining in places after being forbidden, soliciting for prostitutes, any crimes related to alcohol or drugs.</p>	<p>Has pending disciplinary action from any other regulatory board in any jurisdiction or country.</p>
<p>Crimes designated as “sex offense” or “aggravated offense” or “sexual offense against a minor” as set forth in La R.S. 15:541 http://www.legis.la.gov/Legis/Law.aspx?d=79160</p>	<p>A misdemeanor crime which reflects an inability to practice physical therapy safely where there exist aggravating circumstances, including but not limited to, ongoing substance abuse</p>	<p>Allowed to participate in a pretrial diversion program in lieu of prosecution for a crime that does not constitute denial but reflects inability of the person to practice physical therapy safely and conditions of the court or pre-trial</p>

	discovered as part of the investigation.	diversion program have not been met or is currently serving probation or parole.
Misappropriation crimes: Unauthorized use of "access card", credit card fraud, identity theft, theft of assets of an aged or disabled person, fraudulent acquisition of a credit card, unauthorized use of food stamps, Medicaid fraud, access device fraud, bank fraud, or equivalent crimes in jurisdictions other than La.		Diagnosed with a physical or mental infirmity that interferes with the ability to practice physical therapy safely.
		Diagnosed or treated for substance abuse or substance abuse disorders.

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Section A

- Section not negated by:
 - Suspension of sentence
 - Expungement
 - Or Similar action
- Not eligible to submit a new application
- Does not apply to reinstatement of a license that has been suspended or surrendered as a result of disciplinary action taken against a licensee by the board or which reinstatement would otherwise be subject to the provision of Rule §185.

Section B

Applicants not eligible to submit new application until the following conditions are met:

- Presents evidence that 5 years has lapsed since final disposition.
- Completed all court ordered probation/parole, community supervision, restitution.
- Provides evidence including but not limited to certified court documents, comprehensive evaluations by board-approved evaluators, employer references and other evidence of rehabilitation prior to requesting an administrative hearing.
- Hearing or conference before board or LPTB staff- allow the applicant the opportunity to prove the cause for denial no longer exists and provide opportunity for the board to determine if new application can be submitted without being subject to mandatory delay provisions.

Section C

Applicants not eligible to submit new application until the following conditions are met:

- If delay is based on existence of pending criminal charge, must present evidence that charge has been dismissed including but not limited to completion of pretrial diversion program, completion of conditions imposed for consideration of suspension of a sentence or equivalent in jurisdiction other than La
- If charge results in a felony conviction, other than for the commission of a crime that would constitute grounds for denial of application, applicant must present evidence that 5 years has lapsed since final disposition and completion of all court ordered probation or parole.
- If charge results in a misdemeanor conviction, other than for the commission of a crime that would constitute grounds for denial of application, applicant must present evidence of the final disposition of the criminal case including, if applicable, completion of court ordered probation or parole.
- If delay is based on pending disciplinary action, applicant must present evidence of unencumbered license(s) or certification from all affected jurisdictions that the matter has been satisfactorily resolved.
- If delay is based on existence of physical or mental infirmity, applicant must present comprehensive psychological, psychiatric, chemical dependency, and/or other appropriate medical evaluations completed with board-approved evaluators, which may include but not limited to forensic evaluations with polygraph examination, that evidence the ability of the applicant to practice nursing safely.
- If delay is based on the existence of substance use disorder or dependency and/or treatment for dependency, applicant must provide evidence for the board to determine the respondent/applicant's present fitness to practice ((LAC 46: LIV §365).
- An administrative hearing before the board or an informal conference is held to review the evidence, to afford applicant the opportunity to prove that the cause for the delay no longer exists and to provide an opportunity for the board to determine if a new application can be submitted without being subject to mandatory delay provisions.

VI. DISQUALIFYING CRIMINAL OFFENSES

PTs/PTAs convicted of these crimes are restricted from working in home health and nursing home facilities.

- solicitation for murder [LA RS 14:28.1](#)
- first degree murder [LA RS 14:30](#)
- second degree murder [LA RS 14:30.1](#)
- manslaughter [LA RS 14:31](#)
- first degree feticide [LA RS 14:32.6](#)
- (assisting with) suicide [LA RS 14:32.12](#)
- aggravated battery [LA RS 14:34](#)
- second degree battery [LA RS 14:34.1](#)
- aggravated second degree battery [LA RS 14:34.7](#)

- simple battery of the infirmed [LA RS 14:35.2](#)
- aggravated assault [LA RS 14:37](#)
- assault by drive-by shooting [LA RS 14:37.1](#)
- aggravated assault with a firearm [LA RS 14:37.4](#)
- mingling harmful substances [LA RS 14:38.1](#)
- aggravated rape [LA RS 14:42](#)
- forcible rape [LA RS 14:42.1](#)
- simple rape [LA RS 14:43](#)
- sexual battery [LA RS 14:43.1](#)
- second degree sexual battery [LA RS 14:43.2](#)
- oral sexual battery [LA RS 14.43.3](#)
- intentional exposure to the AIDS virus [LA RS 14.43.5](#)
- aggravated kidnapping [LA RS 14.44](#)
- second degree kidnapping [LA RS 14.44.1](#)
- human trafficking [LA RS 14:46.2](#)
- arson and use of explosives [LA RS 14:51](#)
- burglary [LA RS 14:60](#)
- simple burglary of a pharmacy [LA RS 14:62.1](#)
- armed robbery [LA RS 14:64](#)
- first degree robbery [LA RS 14:64.1](#)
- second degree robbery [LA RS 14:64.4](#)
- extortion [LA RS 14:66](#)
- theft of assets of an aged person or a disabled person [LA RS 14:67.21](#)
- crime against nature [LA RS 14:89](#)
- aggravated crime against nature [LA RS 14:89.1](#)
- cruelty to the infirmed [LA RS 14:93.3](#)
- exploitation of the infirmed [LA RS 14:93.4](#)
- sexual battery of the infirmed [LA RS 14:93.5](#)

PTs/PTAS convicted of these crimes are prohibited from ever working with individuals under the age of 21.

- aggravated kidnapping of a child [LA RS 14.44.2](#)
- misdemeanor carnal knowledge of a juvenile [LA RS 14.80.1](#)
- molestation of a juvenile or a person with mental or physical disability [LA RS 14.81.2](#)
- cruelty to juveniles [LA RS 14:93](#)