



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
35 STATE HOUSE STATION
AUGUSTA, MAINE
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Janet T. Mills
Governor

Anne L. Head
Commissioner

Use of Criminal Record Information by the Department of Professional and Financial Regulation

November 8, 2021

Good afternoon and thank you for the opportunity to share information with the committee about how DPFR and its agencies use criminal records information. My name is Anne Head. I am Commissioner of the Department. We appreciate the opportunity to present a panel since the Department includes a wide range of agencies and boards. Since some of you may not be familiar with our Department, I want to provide some brief information about who we are and who we regulate:

DPFR consists of five agencies:

- **Bureau of Financial Institutions** supervises state-chartered financial institutions including banks, credit unions, and nondepository trust companies.
- **Bureau of Insurance** regulates individuals and business entities related to insurance such as insurance companies, insurance agents, and pharmacy benefit managers.
- **Bureau of Consumer Credit Protection** regulates many aspects of the consumer finance industry, including non-bank mortgage lenders, debt collectors, loan brokers, retail creditors, money transmitters, credit reporting agencies, and non-bank ATMs.
- **Office of Securities** regulates broker dealers, their agents, investment advisers, and financial planners.
- **Office of Professional and Occupational Regulation**, which regulates many, but not all, professions and occupations.

In addition, there are 6 licensing boards affiliated with the Department which include the Board of Licensure in Medicine, Board of Osteopathic Licensure, Board of Dental Practice, Board of Optometry, Board of Licensure for Professional Engineers and State Board of Nursing.

Each of our agencies protects the public through their regulatory oversight authority by ensuring that our licensees are ethical, professional, and competent. Criminal records history is one of the tools used to fulfill that public protection mission.

As Director of the DPFR Office of Professional and Occupational Regulation, I'll start

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first and following me will be **Tim Terranova**, Asst Executive Director of Board of Licensure in Medicine, **Judy Shaw**, Administrator of the Office of Securities, and **Kristine Fournier**, Bureau of Consumer Credit Protection's expert on the Nationwide Mortgage Licensing System. Eric Cioppa from the Bureau of Insurance has submitted a letter with information on this subject since he was not able to participate today.

Office of Professional and Occupational Regulation

For professions and occupations licensed under Title 32, Title 5 chapter [341](#) governs the use of criminal history to determine eligibility for professional and occupational licenses.

[Title 5, Section 5301, subsection 1](#) states:

- “[i]n determining eligibility for the granting of any occupational licenses . . . issued by the State, the appropriate State licensing agency *may* take into consideration criminal history information from Maine or elsewhere relating to certain convictions which have not been set aside or for which a full and free pardon has not been granted, *but the existence of such information shall not operate as an automatic bar to being licensed . . . or permitted to practice any profession, trade or occupation.*” (emphasis added)

[Title 5, Section 5302, subsection 1](#) further provides that:

- “[l]icensing agencies may refuse to grant or renew, or may suspend, revoke or take other disciplinary action against any occupational license, registration or permit, on the basis of the criminal history record information relating to convictions . . . in [section 5301, subsection 2](#), but only if the licensing agency determines that the applicant, licensee, registrant or permit holder so convicted has not been sufficiently rehabilitated to warrant the public trust.”
- Subsection 2 identifies the types of convictions that can be considered for licensing purposes including:
 - A. Convictions for which incarceration for less than one year may be imposed and which involve dishonesty or false statement;
 - B. Convictions for which incarceration for less than one year may be imposed and which directly relate to the trade or occupation for which the license or permit is sought;
 - C. Convictions for which no incarceration can be imposed and which directly relate to the trade or occupation for which the license or permit is sought;
 - D. Convictions for which incarceration for one year or more may be imposed;
 - E. And, for the health care licensees, convictions for which incarceration for less than one year may be imposed and that involve sexual misconduct by an applicant

[Title 5, Section 5303](#) governs the time limit on consideration of prior criminal convictions.

- For most professions or occupations, there is a 3-year look back period from the date of final discharge.
- However, for the health care licensing boards, the look-back period is 10 years. According to the statute, there is no time limitation for consideration a criminal conviction if that conduct is otherwise a ground for disciplinary action against a licensee. An example might be a conviction related to sexual misconduct.

Of note, OPOR removed the criminal conviction question from all of its initial license applications so that the question wouldn't be interpreted by applicants as a barrier to licensure. However, applicants for licensure are notified that a Maine State Bureau of Identification ("SBI") criminal history record check is a component of the application process.

For individual applicants to OPOR licensing boards, a criminal conviction is not an automatic disqualification for licensure. In fact, very few applicants for OPOR licenses are turned down because of criminal conviction history. The implication of a criminal conviction is fact and profession-specific, and applicants who may be disqualified on the basis of a criminal conviction may always request an adjudicatory hearing to speak directly to a licensing board to assert that they are sufficiently rehabilitated to warrant the public trust.

Finally, I want to mention that many of OPOR's licensing entities are required to maintain certain statutory or national standards, one of which may be FBI/DOJ criminal history checks. For example, in 2018, a requirement for an FBI check for licensees of the Board of Real Estate Appraisers was imposed by the federal oversight agency for appraisers. During the 2nd session of the 130th Legislature, the Legislature enacted a law requiring the Board of Psychological Examiners to join PsyPact, a multi-state licensing compact for psychologists. As part of that compact, the Maine Board is required to perform FBI/DOJ criminal history checks on applicants as part of the licensure process.

Thank you for the opportunity to address this subject area.