Medical Radiation Practice Board of Australia

Authority

This standard was approved by the Australian Health Workforce Ministerial Council in December 2011 pursuant to the *Health Practitioner Regulation National Law Act* as in force in each state and territory (the National Law), with the approval taking effect from 1 July 2012.

Summary

In deciding whether a health practitioner's criminal history is relevant to the practice of their profession, the Board will consider the 10 factors set out in this standard. While every case will need to be decided on an individual basis, these 10 factors provide the basis for the Board's consideration.

Scope of application

This standard applies to all applicants and all registered health practitioners. It does not apply to students.

Requirements

In deciding whether a health practitioner's criminal history is relevant to the practice of their profession, the Board will consider the following factors.

1. **The nature and gravity of the offence or alleged offence and its relevance to health practice.**

   The more serious the offence or alleged offence and the greater its relevance to health practice, the more weight that the Board will assign to it.

2. **The period of time since the health practitioner committed, or allegedly committed, the offence.**

   The Board will generally place greater weight on more recent offences.

3. **Whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending.**

   In considering the relevance of the criminal history information, the Board is to have regard to the type of criminal history information provided. The following types of criminal history information are to be considered, in descending order of relevance:

   a) convictions

   b) findings of guilt

   c) pending charges

   d) non-conviction charges; that is, charges that have been resolved otherwise than by a conviction or finding of guilt, taking into account the availability and source of contextual information which may explain why a non conviction charge did not result in a conviction or finding of guilt.

4. **The sentence imposed for the offence.**

   The weight the Board will place on the sentence will generally increase as the significance of the sentence increases, including any custodial period imposed. The Board will also consider any mitigating factors raised in sentencing, where available, including rehabilitation.

5. **The ages of the health practitioner and of any victim at the time the health practitioner committed, or allegedly committed, the offence.**

   The Board may place less weight on offences committed when the applicant is younger, and particularly under 18 years of age. The Board may place more weight on offences involving victims under 18 years of age or other vulnerable persons.

6. **Whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the health practitioner committed, or allegedly committed, the offence.**

   The Board will generally place less or no weight on offences that have been decriminalised since the health practitioner committed, or allegedly committed, the offence.

7. **The health practitioner's behaviour since he or she committed, or allegedly committed, the offence.**

   Indications that the offence was an aberration and evidence of good conduct or rehabilitation since the commission, or alleged commission of the offence, will tend to be a mitigating factor. However, indications that the offence is part of a pattern of behaviour will tend to have the opposite effect.

8. **The likelihood of future threat to a patient of the health practitioner.**

   The Board is likely to place significant weight on the likelihood of future threat to a patient or client of the health practitioner.

9. **Any information given by the health practitioner.**

   Any information provided by the health practitioner such as an explanation or mitigating factors will be reviewed by the Board and taken into account in considering the health practitioner's criminal history.

10. **Any other matter that the Board considers relevant.**

    The Board may take into account any other matter that it considers relevant to the application or notification. A Board will not require an applicant or registered health practitioner to provide further information that may prejudice their personal situation pending charges and the Board must not draw any adverse inference as a result of the fact that information has not been provided.

Note: the above factors have been numbered for ease of reference only. The numbering does not indicate a priority order of application.

Definitions

Criminal history is defined in the National Law as:

- every conviction of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law,
- every plea of guilty or finding of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law and whether or not a conviction is recorded for the offence
- every charge made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law.

Under the National Law, spent convictions legislation does not apply to criminal history disclosure requirements.

Review

This standard will commence on 1 July 2012. The Board will review this standard at least every three years.

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