



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Clarksburg, WV 26306

July 7, 2016

Julie A. LeTourneau Lackner
Minnesota Justice Information
Services
Bureau of Criminal Apprehension
1430 Maryland Avenue East
St. Paul, MN 55106-7001

Dear Ms. LeTourneau Lackner:

This is in reference to your emails, dated February 26, 2016 and April 1, 2016, requesting a review of Minnesota Statutes Annotated (MnSA), Section 147.38, to determine if it meets the standards of Public Law (Pub. L.) 92-544 for access to FBI criminal history record information (CHRI).

The Criminal Justice Information Law Unit's (CJILU) legal staff has reviewed MnSA § 147.38, pertaining to background checks of applicants for an expedited physician license and has determined that it does not meet the requirements of Pub. L. 92-544. It appears to authorize the dissemination of FBI CHRI to the Interstate Medical Licensure Compact Commission which is a private nongovernmental entity; it does not indicate that fingerprints will be submitted to the FBI and it does not authorize the use of FBI records for the screening of applicants. There is also no reference to a Minnesota governmental agency who is authorized to conduct this background check. Specifically MnSA § 147.38, Article 8 requires member boards to report to the Interstate Commission disciplinary or investigatory information on a physician who has been issued an expedited license. Further, this section also authorizes the Interstate Commission to develop rules for mandated or discretionary sharing of information by member boards.

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Authority to disseminate FBI CHRI is derived from specific federal statutory authority. The FBI is not aware of a federal statute that authorizes dissemination of FBI CHRI to this Interstate Commission. Dissemination of Minnesota arrest and disposition records is subject to Minnesota's laws and regulations. Further, the FBI has no objection to an Interstate Commission independently obtaining information from another state repository, arresting agency, court, or through self-disclosure and using that information in the same manner Minnesota uses its own information. However, the Interstate Commission may not cite information it obtains as being an FBI-maintained record or reference a federal background check in any way.

As background, since 1972, the FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544. In order to meet the requirements of Pub. L. 92-544, a statute must meet the following criteria: (a) exist as the result of a legislative enactment; (b) require the fingerprinting of applicants who are to be subjected to a national criminal history background check; (c) expressly ("submit to the FBI") or by implication ("submit for a national check") authorize the use of FBI records for the screening of applicants; (d) identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth; (e) not be against public policy; and (f) not permit unauthorized receipt of the CHRI by a private entity.

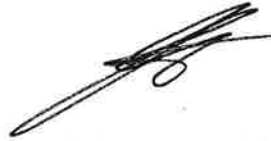
In your request you asked that the Board of Medical Practice be authorized to utilize previously approved MnSA § 214.075 in conjunction with MnSA § 147.38 to conduct the FBI fingerprint-based background checks. A review indicates that MnSA § 214.075 authorizes various Minnesota medical boards to conduct FBI fingerprint-based background checks on applicants for initial licensure, licensure by endorsement, reinstatement or other relicensure after a lapse in licensure. The statutory language of MnSA § 214.075 does not appear to cover expedited licensure. However, if MnSA § 214.075 was amended to specifically include applicants for expedited licensure, FBI fingerprint-based background checks would be authorized for this category. Please be aware that if MnSA § 214.075 is amended to include applicants for expedited licensure and approved by CJILU, FBI CHRI obtained by an appropriate Minnesota medical licensing board may not be disseminated outside of the state licensing board to the Interstate Commission, which is a private entity created pursuant to the Interstate Medical Licensure Compact.

As you are aware, access to FBI CHRI is subject to numerous restrictive laws and regulations. Dissemination of such information outside the receiving governmental department or related governmental agency to private entities is prohibited. Further, the exchange of CHRI is subject to cancellation if such unauthorized dissemination is made.

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Should you have further questions concerning this matter, please do not hesitate to contact Paralegal Specialist David N. Boone of the CJILU at (304) 625-5961.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Christopher B. Chaney", with a stylized flourish at the end.

**Christopher B. Chaney
Unit Chief
Criminal Justice Information Law Unit
Office of the General Counsel**