



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Clarksburg, WV 26306

June 21, 2016

Ms. Eleanor Cooperider  
Montana Compact Officer  
Division of Criminal Investigation  
Montana Department of Justice  
Post Office Box 201403  
Helena, MT 59620-1403

Dear Ms. Cooperider:

This is in reference to your letter, dated September 10, 2015, requesting a review of House Bill 429 amending Montana Code Annotated (MtCA), Section 37-3-356, 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 MtCA § 37-3-356, 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 Montana governmental agency who is authorized to conduct a background check. Specifically MtCA § 37-3-356, Section 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 Montana arrest and disposition records is subject to Montana'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 Montana 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.

During our review, the CJILU discovered that MtCA §§ 37-3-301 and 305 require the Montana Board of Medical Examiners to issue physician licenses however, these sections do not require the licensees to undergo a national background check or submit fingerprints to the FBI through the Montana Department of Justice. For FBI fingerprint-based background checks to be conducted on applicants for a physician license and physicians applying for expedited licenses, MtCA Title 37, Chapter 3 would need to be amended to meet the requirements of Pub. L. 92-544 as listed above. Please be aware that FBI CHRI obtained by an appropriate Montana board of licensing for an approved purpose may not be disseminated outside of the state licensing board to the Interstate Commission, a private entity created pursuant to the Interstate Medical Licensure Compact.

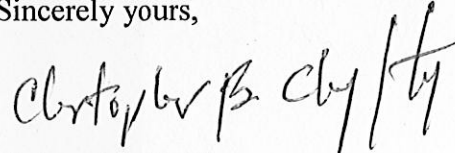
As you are aware, access to FBI CHRI is subject to numerous restrictive laws and regulations. Dissemination of such information outside the receiving governmental department or related governmental agency to private entities is prohibited. Further, the exchange of CHRI is subject to cancellation if such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

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Should you have 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 cursive script, appearing to read "Christopher B. Chaney".

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

1 – Mr. Butch Huseby  
Bureau Chief  
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