



# TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

## Operating Policy and Procedure

**HSCEP OP:** 10.20, **Criminal Background Checks for Students, Residents and Trainees**

**PURPOSE:** The purpose of this Texas Tech University Health Sciences Center El Paso Operating Policy and Procedure (HSCEP OP) is to promote understanding and establish a standardized approach regarding the conduct of student, resident, and trainee background checks for the respective Schools and training programs of TTUHSCEP.

**REVIEW:** This HSCEP OP will be reviewed in October of each odd-numbered year (ONY) by the respective Deans, the Registrar, General Counsel, and the Office of Graduate Medical Education, with recommendations for revisions to be submitted to the President by December 1.

**DEFINITIONS:** For purposes of this policy, the following terms are defined as follows:

**Students** may be defined as applicants, admittees, enrollees, or appointees. These individuals shall not be eligible for procedural due process under the TTUHSCEP Student Handbook or TTUHSCEP House Staff Policies and Procedures until such time as the individual has attended class or begun training.

### **POLICY/PROCEDURE:**

#### **1. Rationale for Background Checks.**

- a. This policy is designed to provide a safe environment for patients and others at TTUHSCEP and affiliating sites. Criminal background checks (CBCs) allow the university to evaluate whether TTUHSCEP students are qualified, eligible, and possess the character and fitness to participate in clinical care and/or clinical rotation sites at TTUHSCEP or participating institutions. *This policy applies only to students/residents who will participate in patient interactions or clinical training.*
- b. Where reference is made to "student/s," the same shall apply to any other trainee/s who will participate in patient interactions or clinical training, including, but not limited to, persons who have been admitted to a TTUHSCEP School that has a clinical training program, residents in training, or persons from outside TTUHSCEP who participate in patient interactions or clinical training in TTUHSCEP facilities and affiliating entities, if applicable. Where the term "resident" is used, it shall encompass the term "fellow" as well. Where reference is made to "School/s," the same shall apply to Graduate Medical Education (GME) programs. Distance education participants may also be subject to the requirement of CBCs, depending on individual school or licensure requirements.
- c. Institutions of higher education in Texas are required, not later than one year before the date that applications for admission are first considered, to publish in their catalogs a description of the factors considered by the institution in making admission decisions, including the requirement of undergoing a CBC, and shall make the information available to the public through its handbooks and websites.<sup>1</sup>
- d. TTUHSCEP is interested in and desires to facilitate the graduation of its students and completion of training programs by residents in order that they may become qualified and

<sup>1</sup> Tex. Educ. Code §§ 51.805(d) & 51.842(d).

licensed and possess the character and fitness required of professionals in the healthcare field. Therefore, TTUHSCEP requires that students undergo CBCs, unless otherwise directed by the President or administrative designee. Admission to TTUHSCEP or receipt of a degree from TTUHSCEP does not guarantee that a state licensure board will ultimately issue a license to an individual with or without a criminal record. "Admission" is that status when the university gives notice to students prior to formal "matriculation, enrollment, or appointment" as applicable to each school that they have met all institutional requirements for entry into the respective training programs. This policy outlines the university's use of student background checks after admission. This policy also applies to existing students who are in the various TTUHSC clinical training programs. Students will be required to acknowledge the requirement that they must undergo a background check as set forth in **Attachment A** or equivalent language. Background checks on students will be conducted as and when deemed necessary or required. A break in enrollment, such as a leave of absence or withdrawal, shall require that students undergo an additional CBC, unless specific facts indicate otherwise, as determined by the Dean or his/her designee.

- e. The following TTUHSCEP Schools require a CBC after admission but prior to matriculation:
- (1) Paul L. Foster School of Medicine, effective July 1, 2009;
  - (2) Gayle Greve Hunt School of Nursing, effective July 1;
  - (3) Graduate School of Biomedical Sciences, effective August 15

For those programs or courses that involve patient interactions or clinical training, a CBC is required after matriculation but before enrollment in the program or course.

An additional background check may be conducted at other times on an as needed basis, to be determined by the Dean or his/her designee of each respective School, or as otherwise required by the President or administrative designee.

- f. Some criminal offenses preclude students from participating in patient care. In addition, some professional licensure boards include specific offenses which constitute crimes for which licensure is prohibited. Thus, students from those respective professional schools are subject to the statutory or regulatory requirements independently imposed by law, or as required by affiliating entities. Felonies and misdemeanors constitute "criminal offenses" including, but not limited to, sexual offenses, i.e., registered sex offenders must disclose this information to the university; homicide or murder; abuse of at-risk populations, e.g., children, elderly, prisoners, patients; possession of child pornography; possession of illegal substances with intent to sell; inclusion on a list of excluded individuals or specially designated nationals; and, dishonorable discharge. Students must also meet any and all requirements of the training site, which may be more extensive than referenced hereinabove. Inability to participate in patient care or being subject to any other exclusion prescribed by law precludes the successful completion of the requisite curriculum. As such, affected students are not eligible for matriculation, continuation in the program, or graduation, as applicable to each school.
- g. Students are required to consent in writing to undergo a CBC, provide a self-disclosure of past criminal activity, if applicable, and authorize the disclosure of that information to TTUHSCEP administration or the training facility, if applicable. See Attachment B. Residents are also required to consent to undergo a CBC. See Attachment C.

Students, trainees, and residents are required to include on the consent and/or authorization form information including, but not limited to, the cities, counties and countries of all known residences; date of birth; all names and aliases ever used; verification of prior employment, reason for separation and eligibility for re-hire; verification of academic credentials, etc.

- h. Students, trainees, and residents shall timely self-disclose relevant criminal history record information no later than five (5) business days following the charge of a crime. "Criminal history record information" (CHRI) means information collected about students, trainees or residents by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges, and their dispositions.<sup>2</sup> If self-disclosure reveals CHRI, the individual must then undergo a contemporaneous CBC, which may include fingerprinting. The report will be made available to the appropriate Dean or his/her designee. Failure of students, trainees or residents to disclose information which is subsequently found on a background check may result in dismissal or withdrawal of acceptance from the university.
- i. TTUHSCEP will designate the company (Vendor) approved to conduct the CBCs. CBCs conducted by any other company will not be accepted. Students shall order CBCs directly from the vendor selected by TTUHSCEP. The approved Vendor will issue reports to the School representative, GME Offices in El Paso, The cost of all background check(s) shall be the responsibility of the students, trainees, and residents. The cost of the CBC will depend on many factors, such as where the individuals have lived. TTUHSCEP will require that a CBC cover all foreign countries in which the individuals have lived, if TTUHSCEP determines that the information is available.
- j. Background checks will have no time limit and may include, but not be limited to, CHRI.
- k. Medical disabilities including psychiatric disorders or treatment for same shall not be the subject of a CBC.

**2. Consequences to the:**

**a. Student**

- 1. An adverse response to self-disclosure information or the existence of CHRI will not constitute an automatic bar to matriculation or patient care placement. However, refusal to complete the self-disclosure or to consent to a background check, or falsification of information regarding the background check will preclude students from enrollment, matriculation, continued training, or graduation, if applicable.
- 2. Students who self-disclose CHRI will be required to provide to their respective Deans appropriate documentation identifying the CHRI including, but not limited to, court records and other relevant documents which will be reviewed to determine educational and professional eligibility, character and fitness.
- 3. Students who have applied to a TTUHSCEP School that requires a CBC prior to matriculation shall not be allowed to enroll in any course if he/she refuses to submit to a CBC or does not pass a CBC review. For those TTUHSCEP Schools that do not require a CBC prior to matriculation, participation in a course involving patient interaction or clinical training will be allowed only after receipt of the subsequent background check record indicating no CHRI exists.
- 4. None of the provisions of this policy shall be used as the basis for illegal discrimination or retaliation against any individuals or groups.
- 5. CHRI is confidential and shall be protected from disclosure to the greatest extent provided by law.

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<sup>2</sup> Tex. Gov't Code § 411.082.

**b. Resident or Fellow**

1. An adverse response to self-disclosure information or the existence of CHRI will not constitute an automatic bar to appointment to a TTUHSCEP residency or fellowship program. However, refusal to complete the self-disclosure or to consent to a background check, or falsification of information regarding the background check will preclude the residents or fellows from appointment, continued training, or completion, if applicable.
2. Residents who self-disclose CHRI will be required to provide to their respective Deans appropriate documentation identifying the CHRI, including, but not limited to, court records and other relevant documents which will be reviewed to determine educational and professional eligibility, character and fitness.
3. An applicant who has applied to a TTUHSCEP PLFSOM residency or fellowship Program and refuses to submit to a CBC shall not be offered a contract. A resident or fellow who does not pass a CBC review may have his/her contract terminated.
4. None of the provisions of this policy shall be used as the basis for illegal discrimination or retaliation against any individuals or groups.
5. CHRI is confidential and shall be protected from disclosure to the greatest extent provided by law.

**3. Process for:**

**a. Students**

1. Applications to TTUHSCEP will be processed and reviewed pursuant to the written policies and practices of the respective Schools or programs. For those TTUHSCEP Schools requiring CBCs prior to matriculation, after reviewing the application for eligibility and fitness and determining whether the applicant should be accepted, the School will send the student a letter of acceptance and require that the student contact the approved Vendor to obtain a CBC.
2. Students must contact the designated Vendor directly, comply with its instructions in authorizing and obtaining a CBC, and individually pay all costs associated with the CBC.
3. If a student undergoes a CBC and CHRI is identified, the Dean, or his/her designee, will promptly notify the student of the fact that CHRI has been identified. If applicable, students may also be notified by the Vendor or affiliated training site that conducted the CBC.
4. Where CHRI exists, pending any challenge by the student against the Vendor relative to the accuracy of the report, the Dean may appoint an *ad hoc* committee from the School to review the CHRI. The *ad hoc* committee may then make a recommendation to the respective Dean or his/her designee regarding enrollment, matriculation, or continued training, whichever is applicable. Consideration shall be given to relevance of the conviction or charge; the nature of the training; documented successful rehabilitation as may be required by professional or state licensure boards; and, the length of time that has elapsed since the conviction occurred. Any felony or misdemeanor conviction will be noted for the purpose of evaluating student eligibility, character, or fitness for

training or continued education. The Dean will make a final decision regarding enrollment, withdrawal/revocation of acceptance/admission, or continuation in the program, whichever is applicable.

5. If it is determined that the student is not eligible for enrollment, the student shall be notified promptly by the respective Dean, or his/her designee. If the student has already matriculated, he/she will be entitled to appeal the decision under the academic dismissal policies of the applicable School.
6. Existing students will be required to undergo a CBC as and when deemed necessary to the same extent as outlined hereinabove.

**b. Residents**

1. Applications to TTUHSCEP will be processed and reviewed pursuant to the written policies and practices of the respective Schools or programs. For those TTUHSCEP Schools requiring CBCs prior to starting, after reviewing the application for eligibility and fitness and determining whether the applicant should be accepted, the School will send the resident a letter of acceptance and require that the resident contact the approved Vendor to obtain a CBC.
2. Residents must contact the designated Vendor directly, comply with its instructions in authorizing and obtaining a CBC, and individually pay all costs associated with the CBC.
3. If a resident undergoes a CBC and CHRI is identified, the Dean, or his/her designee, will promptly notify the resident of the fact that CHRI has been identified. If applicable, residents may also be notified by the Vendor or affiliating training site that conducted the CBC.
4. Where CHRI exists, pending any challenge by the resident against the Vendor relative to the accuracy of the report, the Dean may appoint an *ad hoc* committee from the School in a timely manner to review the CHRI. The *ad hoc* committee may then make a recommendation to the respective Dean or his/her designee regarding starting or continuing training, whichever is applicable. Consideration shall be given to relevance of the conviction or charge; the nature of the training; documented successful rehabilitation as may be required by professional or state licensure boards; and the length of time that has elapsed since the conviction occurred. Any felony or misdemeanor conviction will be noted for the purpose of evaluating resident eligibility, character, or fitness for training or continued education. The Dean will make a final decision regarding starting, withdrawal/revocation of acceptance, or continuation in the program, whichever is applicable.
5. If it is determined that the resident is not eligible to begin his/her training, the resident shall be notified promptly by the respective Dean, or his/her designee.
6. Existing residents will be required to undergo a CBC as and when deemed necessary to the same extent as outlined hereinabove, with the exception of Section 3a.

**4. Requirements for Maintaining Criminal Background Information**

- a. All CHRI pertaining to students and residents shall be privileged and confidential, and shall not be released or otherwise disclosed to any person or agency, other than (1) individuals involved in TTUHSCEP admissions decisions; (2) persons who have a

legitimate, TTUHSCEP business-related need to know, as determined by the Dean; (3) upon direction of a court order; (4) any affiliated entity providing training that in writing requires such information; or, (5) with the written consent of the student or resident made the subject of the CBC.

- b. Release of privileged and confidential information by TTUHSCEP personnel, other than described above, shall be subject to, or may result in, disciplinary action as defined in HSCEP OP 70.31, "Standards of Conduct, Discipline and Separation of Employees," HSCEP OP 52.09, "Confidential Information," or Housestaff Policies and Procedures. The unauthorized use of CHRI is punishable as a misdemeanor or felony under Texas law, depending on the use.<sup>3</sup>
- c. Criminal history record information shall be maintained by the Office of the Registrar, Dean or Office of Graduate Medical Education separate from the students' or residents' regular education/training records and treated as confidential.
- d. If it has been determined that the student or resident is not eligible for enrollment or training, the student or resident shall be notified by the respective Dean, or his/her designee. At a minimum, the information will be retained until such time that an appeal, if any, has concluded. Thereafter, such information, wherever located, will be immediately destroyed three (3) years after the beginning of the semester of application or otherwise in accordance with the Fair and Accurate Credit Transaction Act.<sup>4</sup>
- e. CHRI regarding students or residents who have been admitted, or who are already enrolled, will be maintained until such time that eligibility, character and fitness for participating in clinical training have been determined. The criminal history record will be destroyed immediately upon the School's determination regarding continued participation in the various TTUHSCEP programs, until such time an appeal, if any, has ended the information has been used for the purpose intended, or five (5) years from the date of the CBC, whichever is the greater length of time.

## 5. Responsibilities

- a. **Office of Registrar/Office of Graduate Medical Education (GME is responsible for:**
  - (1) Coordinating selection of Vendor with appropriate TTUHSCEP purchasing and/or contracting offices.
  - (2) Serving as the liaison with the Vendor conducting the CBCs.
- b. **School Representatives, GME/ only, are responsible for:**
  - (1) Coordinating background checks with the Vendor to determine whether CHRI exists regarding students or residents participating in clinical programs.
  - (2) Receiving results of criminal background checks from the Vendor, obtaining all Consents for Criminal Background Checks and Releases from the Vendor and using appropriate safeguards to ensure confidentiality.
  - (3) Placing an initial "hold" on enrollment or training for those students or residents who have not submitted to a CBC.
  - (4) Maintaining as confidential all information related to CHRI; providing certification

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<sup>3</sup> Tex. Gov't Code, §411.085.

<sup>4</sup> 16 CFR 682.1; 16 CFR 682.3.

of the CHRI to the respective Schools within five (5) days, if possible; and, disclosing specific information only to the person(s) who must act on the information.

- (5) For those Schools requiring CBCs prior to matriculation or appointment, issuing conditional admission notices to students or residents who have been accepted when CHRI is not found. When CHRI is identified, the School Representative/ Office of GME will relate the existence of CHRI to the Dean of the School, or his/her designee, who, with the assistance of an *ad hoc* committee, may then consider the relevance of the information as it relates to the student or resident.
- (6) Destroying CHRI in the Office of the Registrar/Office of GME in accordance with Section 4 above.

**c. The Dean of each respective School or his/her designee is responsible for:**

- (1) Seeing that the Graduate School of Biomedical Sciences maintains the holds for the respective programs that involve patient interaction or clinical training in accordance with individual program requirements.
- (2) Providing notices to applicants that enrollment in courses or training involving patient interaction or clinical training is contingent on the evaluation and acceptable outcome of the criminal background screening.
- (3) Determining whether students or residents who have been accepted and who have CHRI will be enrolled in courses involving patient interaction or clinical training without conditions.
- (4) For those Schools that do not require a CBC prior to matriculation, but do require a CBC prior to enrollment in a course involving patient interaction or clinical training, issuing notices that CHRI is not found. When CHRI is identified, the Dean of the School, or his/her designee, with the assistance of an *ad hoc* committee, may then consider the relevance of the information as it relates to students or residents.
- (5) Removing all records of conviction from the student's or resident's records if, on further review, notification is received that the conviction record has been expunged.
- (6) If CHRI is found, providing a student's or resident's information regarding the right to challenge the accuracy of the information provided by the CBC Vendor and notifying the students or residents that a TTUHSCEP *ad hoc* appeal procedure will be provided. The students or residents will have five (5) days from receipt of the notice to dispute, in writing, the results of the CBC with the Vendor and provide a copy of the dispute to the applicable School. If the report is not in error, but the student or resident believes an explanation is necessary, or there are extenuating circumstances, the trainee will have the opportunity to provide that information to the Dean or his designee within five (5) working days from receipt of this letter. The Dean or his designee shall then transmit his decision to the trainee regarding the review of the CHRI and the information provided by the student or resident.
- (7) Notifying students or residents of action taken regarding matriculation, withdrawal of acceptance, or dismissal where CHRI is found.
- (8) Verifying in writing to the Office of the Registrar, or the GME Office, that CHRI

has been used for the intended purpose and has been destroyed by the School.<sup>5</sup>

- (9) Notifying the Office of the Registrar, or the GME Office, the student or resident, and, where required, the training site, that a trainee already assigned may be ineligible for training or is precluded from progressing in his/her educational activities; or, if TTUHSCEP determines the existence of such CHRI does not preclude the trainee from participation, the information may be provided to the affiliated training site where required to determine eligibility for its facility, so long as written consent is provided by the trainee.
- (10) Receiving from the professional licensure board, where applicable, a written declaratory order certifying the applicant/student as eligible for training when CHRI exists. It shall be the responsibility of the affected student or resident to petition his/her respective professional licensure board, where applicable, to obtain the declaratory order and request that the order be forwarded to the School to establish eligibility, character and fitness for TTUHSCEP programs when a record of criminal history exists.

## 6. Notice of Discrepancy:

Upon receipt of a Notice of Address Discrepancy (“Notice”) received as a result of a criminal background check, the following actions are to be taken:

- a. Confirm Identity. Determine that the student or resident for whom the background check report was requested is the same as the individual identified in the Notice, which may include the following:
  - Compare the information in the background check report with the information TTUHSCEP has in its files regarding the student or resident;
  - Verify the information in the background check report with the student or resident made the subject of the background check report.
- a. Confirm Address. If the identity of the student or resident is confirmed to be the same as the individual made the subject of the background check report, confirm the accuracy of the student’s or resident’s address, which may include the following:
  - Verify the address with the student or resident made the subject of the background check report;
  - Review TTUHSCEP records to verify that the address is correct; or
  - Review third party materials, such as applications, leases, utility bills, etc. to verify the address is correct.
- b. If the identity of the student or resident is confirmed and the address is verified, provide the correct address to the entity from which the Notice was received. If the identity or address of the student or resident cannot be confirmed or verified, contact the Institutional Compliance Office as this may indicate possible identity theft.

## 7. Amending Policy

TTUHSCEP reserves the right to interpret, change, modify, amend or rescind any policy in whole or in part.

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<sup>5</sup> Id.