



FLORIDA BOARD OF NURSING

<http://www.doh.state.fl.us/mqa/nursing>
REQUEST FOR EXEMPTION
AND INSTRUCTIONS

March 2012



Please make copies of all documents for your records.

IMPORTANT NOTICE!

If you have not previously reported these offenses to the Board your file will be forwarded to our Consumer Services office and your exemption application will be placed on hold. All investigations are confidential and staff will not be able to provide you with any further information until you are contacted by an investigator. If you need to report the offense, please contact CSU at: 850-245-4339 and let them know you need to report your offense.

You must hold a valid, active license to be eligible for an exemption. To apply for an exemption, the form must be completed and returned to the Department of Health along with the information listed on the attached checklist. Failure to respond will result in continued disqualification from employment and delay the review of the request.

Chapter 435.07(3), F.S states, "...**the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment.** Employees seeking an exemption have the burden of setting forth sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if continued employment is allowed...".

All licensees with any offense listed in chapter **408.809** Florida Statutes must also apply for an exemption.

If you have a **Felony Disqualifying Offense**, and you have not completed or been lawfully released from confinement, supervision, or sanction for the disqualifying felony in the last 3 years, you will not qualify for an exemption. All disqualifying offenses (felonies and misdemeanors) that have adjudication withheld will be handled the same as a conviction for the purposes of this exemption request.

If you do not have a license you must apply for an exemption with the Agency for Health Care Administration. If you are in the process of applying for a license you do not need to fill out the exemption application separately, you may include a note in your application that you will need an exemption and we will handle it as we process your application for licensure.

All requested information must be submitted before a determination can be made. The appropriate Board within the Department of Health will make notification when a decision related to the request is made.

Mail Application and fees to:

FBN

P.O. Box 6330

Tallahassee, FL 32314-6330

You may also mail any required documents with your application to the P.O. Box

If you have documents that need to be mailed after you have already mailed your application please mail them to:

Florida Board of Nursing

Exemption Request Unit

4052 Bald Cypress Way, BIN C-02

Tallahassee, Florida 32399-3252

Request for Exemption Checklist

**IT IS IMPORTANT TO PROVIDE ALL BELOW INFORMATION
AND CHECK EACH ITEM AS YOU OBTAIN IT...**

_____ **Self-Reporting:** All offenses where you were adjudicated guilty, or had adjudication withheld must be reported to our Consumer Services Unit (CSU). If you have not reported your offense we will send your file to CSU and an investigation will be opened. Your exemption application will be placed on hold until the investigation and any possible disciplinary measure is completed. If you need to report the offense, please contact CSU at: 850-245-4339 and let them know you need to report your offense.

_____ **Exemption Request Application:** Complete and return.

_____ **Agency for Health Care Administration (AHCA) Level II Screening** – Licensees who have completed a Level II screening with AHCA are not required to submit a fingerprint card and \$43.00 fee.
Please note: In the event we cannot verify your screening with AHCA, you will be required to complete the fingerprinting requirement and submit the \$43.00 fee.

_____ **Fingerprint card:** Level II background screening (\$43). To request a Fingerprint Card, please visit website: <http://www.fldoh.sofn.net/>.

_____ **Court Disposition(s):** If criminal history report contains offenses that disqualify you from employment, a copy of the court's disposition for each disqualifying offense is required. Court documents may be obtained from the Clerk of Court in the county where the offense occurred. The disposition is the court document that states what sentence you received for the offense.

_____ **Arrest report(s):** A copy of **the arrest report** for each of the disqualifying offenses is required (see attached Level 1 screening standard). You may obtain a copy of this report from the arresting agency (the Police or Sheriff agency that arrested you.) The arrest report states the reason for your arrest and is written by the arresting officer.

_____ **Probation/Parole or PTI Letter(s):** **IF** you were given probation/parole or PTI (Pre-trial intervention), you will need a letter from the probation office with the following information: The date you started and date scheduled to terminate. If you violated, explain how.

_____ **Recommendation Letters:** 3-5 Letters of reference that will attest to your good moral character, and should be from people you have worked for.

_____ **Proof of your Rehabilitation:** This proof of rehabilitation may take the form of letters from employer's records of successful participation in a rehabilitation program, further education or training, special awards or recognition, or information which indicates that you are not a danger to the safety or well being of others.

_____ **Self-Explanation:** Include an explanation of all events; this should include what you have done to demonstrate by clear and convincing evidence that you should not be disqualified from employment.

**FAILURE TO PROVIDE ALL RELEVANT DOCUMENTATION WILL RESULT IN DELAY OF
EXEMPTION REQUEST AND CONTINUED DISQUALIFICATION FROM EMPLOYMENT**

**DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE
FLORIDA BOARD OF NURSING**
Post Office Box 6330
Tallahassee, FL 32314
(850) 245-4125
www.doh.state.fl.us/mqa/nursing

PROFESSION TYPE (Check one only) Indicate below the type of license you currently hold in the State of Florida.

- Registered Nurse (RN/1701)
- Advanced Registered Nurse Practitioner (ARNP/1701)
- Licensed Practical Nurse (LPN/1702)
- Certified Nursing Assistant (CNA/4401) 4401

BACKGROUND SCREENING (Check one only)

- Fee \$43 - I have not been subjected to a Level II background screening.
- No Fee - I have completed a Level II background screening with the Agency for Health Care Administration (AHCA) in the last six months.

1. PERSONAL INFORMATION

NAME Last/Surname _____ First _____ Middle _____

LICENSE# _____ **DATE OF BIRTH** _____ **SEX** _____ **RACE** _____ **SSN** _____

MAILING ADDRESS _____ Apt. No. _____

City _____ State _____ Zip _____ Country _____

PHYSICAL LOCATION _____ Apt. No. _____
(Required if mailing address is a P.O. Box-See Checklist)

City _____ State _____ Zip _____ Country _____

HOME TELEPHONE _____ **WORK TELEPHONE** _____ **E-MAIL ADDRESS** _____

2. EMPLOYMENT INFORMATION

FACILITY NAME _____

FACILITY TYPE Hospital Home Health Agency Nursing Home Assisted Living Other _____

POSITION WHILE EMPLOYED _____ **EMPLOYMENT DATES** ____/____/____ TO ____/____/____

ADDRESS _____ City _____ State _____ Zip _____

SUPERVISOR _____ **TELEPHONE** _____

Request For Exemption Hearing

I am formally requesting the Department of Health, in accordance with the provision of Chapter 435, provide me with an exemption review. I understand that I must provide clear and convincing evidence to support a reasonable belief that I am of good moral character and that I pose no danger to the health or safety of patients.

I also understand that the decision of the Department of Health regarding this exemption may be contested through a hearing under the provisions of Chapter 120,F.S.

Signature

_____/_____/_____
Date

435.04 Level 2 screening standards.—

(1)(a) All employees required by law to be screened pursuant to this section must undergo security background investigations as a condition of employment and continued employment which includes, but need not be limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement, and national criminal history records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

(b) Fingerprints submitted pursuant to this section on or after July 1, 2012, must be submitted electronically to the Department of Law Enforcement.

(c) An agency may contract with one or more vendors to perform all or part of the electronic fingerprinting pursuant to this section. Such contracts must ensure that the owners and personnel of the vendor performing the electronic fingerprinting are qualified and will ensure the integrity and security of all personal information.

(d) An agency may require by rule that fingerprints submitted pursuant to this section must be submitted electronically to the Department of Law Enforcement on a date earlier than July 1, 2012.

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

(d) Section 782.04, relating to murder.

(e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.

(f) Section 782.071, relating to vehicular homicide.

(g) Section 782.09, relating to killing of an unborn quick child by injury to the mother.

(h) Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.

(i) Section 784.011, relating to assault, if the victim of the offense was a minor.

(j) Section 784.03, relating to battery, if the victim of the offense was a minor.

(k) Section 787.01, relating to kidnapping.

(l) Section 787.02, relating to false imprisonment.

(m) Section 787.025, relating to luring or enticing a child.

(n) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.

(o) Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.

(p) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.

(q) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.

(r) Section 794.011, relating to sexual battery.

(s) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.

(t) Section 794.05, relating to unlawful sexual activity with certain minors.

(u) Chapter 796, relating to prostitution.

(v) Section 798.02, relating to lewd and lascivious behavior.

(w) Chapter 800, relating to lewdness and indecent exposure.

(x) Section 806.01, relating to arson.

(y) Section 810.02, relating to burglary.

(z) Section 810.14, relating to voyeurism, if the offense is a felony.

(aa) Section 810.145, relating to video voyeurism, if the offense is a felony.

(bb) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.

(cc) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.

- (dd)Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- (ee)Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- (ff)Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- (gg)Section 826.04, relating to incest.
- (hh)Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- (ii)Section 827.04, relating to contributing to the delinquency or dependency of a child.
- (jj)Former s. 827.05, relating to negligent treatment of children.
- (kk)Section 827.071, relating to sexual performance by a child.
- (ll)Section 843.01, relating to resisting arrest with violence.
- (mm)Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- (nn)Section 843.12, relating to aiding in an escape.
- (oo)Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- (pp)Chapter 847, relating to obscene literature.
- (qq)Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.
- (rr)Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- (ss)Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- (tt)Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- (uu)Section 944.40, relating to escape.
- (vv)Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
- (ww)Section 944.47, relating to introduction of contraband into a correctional facility.
- (xx)Section 985.701, relating to sexual misconduct in juvenile justice programs.
- (yy)Section 985.711, relating to contraband introduced into detention facilities.

(3)The security background investigations under this section must ensure that no person subject to this section has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or in another jurisdiction.

435.07Exemptions from disqualification.—

Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(1)The head of the appropriate agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

- (a)Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying felony;
- (b)Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction;
- (c)Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction; or
- (d)Findings of delinquency. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense.

For the purposes of this subsection, the term “felonies” means both felonies prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions.

(2)Persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this chapter without application of the waiting period in paragraph (1)(a).

(3)(a) In order for the head of an agency to grant an exemption to any employee, the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment. Employees seeking an exemption have the burden of setting forth clear and convincing evidence of rehabilitation, including, but not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if employment or continued employment is allowed.

(b) The agency may consider as part of its deliberations of the employee's rehabilitation the fact that the employee has, subsequent to the conviction for the disqualifying offense for which the exemption is being sought, been arrested for or convicted of another crime, even if that crime is not a disqualifying offense.

(c) The decision of the head of an agency regarding an exemption may be contested through the hearing procedures set forth in chapter 120. The standard of review by the administrative law judge is whether the agency's intended action is an abuse of discretion.

(4)(a) Disqualification from employment under this chapter may not be removed from, nor may an exemption be granted to, any personnel who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03 or s. 435.04 solely by reason of any pardon, executive clemency, or restoration of civil rights.

(b) Disqualification from employment under this chapter may not be removed from, nor may an exemption be granted to, any person who is a:

1. Sexual predator as designated pursuant to s. 775.21;
2. Career offender pursuant to s. 775.261; or
3. Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

(5) Exemptions granted by one agency shall be considered by subsequent agencies, but are not binding on the subsequent agency.

408.809 Background screening; prohibited offenses.—

(1) Level 2 background screening pursuant to chapter 435 must be conducted through the agency on each of the following persons, who are considered employees for the purposes of conducting screening under chapter 435:

- (a) The licensee, if an individual.
- (b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider.
- (c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider.

(d) Any person who is a controlling interest if the agency has reason to believe that such person has been convicted of any offense prohibited by s. 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the agency a description and explanation of the conviction at the time of license application.

(e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee.

(2) Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g), the person must file a complete set of fingerprints with the agency and the agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints may be retained by the Department of Law Enforcement under s. 943.05(2)(g). The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651 satisfies the requirements of this section if the person subject to screening has

not been unemployed for more than 90 days and such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435 and this section using forms provided by the agency.

(3) All fingerprints must be provided in electronic format. Screening results shall be reviewed by the agency with respect to the offenses specified in s. 435.04 and this section, and the qualifying or disqualifying status of the person named in the request shall be maintained in a database. The qualifying or disqualifying status of the person named in the request shall be posted on a secure website for retrieval by the licensee or designated agent on the licensee's behalf.

(4) In addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:

(a) Any authorizing statutes, if the offense was a felony.

(b) This chapter, if the offense was a felony.

(c) Section 409.920, relating to Medicaid provider fraud.

(d) Section 409.9201, relating to Medicaid fraud.

(e) Section 741.28, relating to domestic violence.

(f) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.

(g) Section 817.234, relating to false and fraudulent insurance claims.

(h) Section 817.505, relating to patient brokering.

(i) Section 817.568, relating to criminal use of personal identification information.

(j) Section 817.60, relating to obtaining a credit card through fraudulent means.

(k) Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.

(l) Section 831.01, relating to forgery.

(m) Section 831.02, relating to uttering forged instruments.

(n) Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.

(o) Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.

(p) Section 831.30, relating to fraud in obtaining medicinal drugs.

(q) Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.