

**315.121 Grounds for acting against licensee -- Notification to board of conviction required -- Petition for reinstatement -- Expungement.**

- (1) The board may refuse to issue or renew a license, permit, or certificate to, or may suspend, temporarily suspend, revoke, fine, place on probation, reprimand, reasonably restrict, or take any combination of these actions against any licensee, permit holder, or certificate holder for the following reasons:
  - (a) Unprofessional or unethical conduct;
  - (b) Mental or physical incapacity that prevents the licensee, permit holder, or certificate holder from engaging or assisting in the practice of pharmacy, the wholesale distribution or manufacturing of drugs, or the provision of home medical equipment and services with reasonable skill, competence, and safety to the public;
  - (c) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to, irrespective of an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of such plea, one (1) or more of the following:
    1. A felony;
    2. An act involving moral turpitude or gross immorality; or
    3. A violation of the pharmacy, drug, or home medical equipment laws, rules, or administrative regulations of this state, any other state, or the federal government;
  - (d) Knowing or having reason to know that a pharmacist, pharmacist intern, pharmacy technician, or home medical equipment and services provider is incapable of engaging or assisting in the practice of pharmacy or providing home medical equipment and services with reasonable skill, competence, and safety to the public and failing to report any relevant information to the board;
  - (e) Knowingly making or causing to be made any false, fraudulent, or forged statement or misrepresentation of a material fact in securing issuance or renewal of a license, permit, or certificate;
  - (f) Engaging in fraud in connection with the practice of pharmacy, the wholesale distribution or manufacturing of drugs, or the provision of home medical equipment and services;
  - (g) Engaging in or aiding and abetting an individual to engage or assist in the practice of pharmacy or the provision of home medical equipment and services without a license or falsely using the title of "pharmacist," "pharmacist intern," "pharmacy technician," "home medical equipment and services provider," "provider," or other term which might imply that the individual is a pharmacist, pharmacist intern, pharmacy technician, or home medical equipment and services provider;
  - (h) Being found by the board to be in violation of any provision of this chapter, KRS Chapter 217, KRS Chapter 218A, or the administrative regulations promulgated pursuant to these chapters;

- (i) Violation of any order issued by the board to comply with any applicable law or administrative regulation;
  - (j) Knowing or having reason to know that a pharmacist, pharmacist intern, or pharmacy technician has engaged in or aided and abetted the unlawful distribution of legend medications, and failing to report any relevant information to the board; or
  - (k) Failure to notify the board within fourteen (14) days of a change in one's home address.
- (2) Unprofessional or unethical conduct includes but is not limited to the following acts of a pharmacist, pharmacist intern, or pharmacy technician:
- (a) Publication or circulation of false, misleading, or deceptive statements concerning the practice of pharmacy;
  - (b) Divulging or revealing to unauthorized persons patient information or the nature of professional services rendered without the patient's express consent or without order or direction of a court. In addition to members, inspectors, or agents of the board, the following are considered authorized persons:
    - 1. The patient, patient's agent, or another pharmacist acting on behalf of the patient;
    - 2. Certified or licensed health-care personnel who are responsible for care of the patient;
    - 3. Designated agents of the Cabinet for Health and Family Services for the purposes of enforcing the provisions of KRS Chapter 218A;
    - 4. Any federal, state, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person; or
    - 5. An agency of government charged with the responsibility of providing medical care for the patient, upon written request by an authorized representative of the agency requesting such information;
  - (c) Selling, transferring, or otherwise disposing of accessories, chemicals, drugs, or devices found in illegal traffic when the pharmacist, pharmacy intern, or pharmacy technician knows or should have known of their intended use in illegal activities;
  - (d) Engaging in conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, or engaging in conduct which substantially departs from accepted standards of pharmacy practice ordinarily exercised by a pharmacist or pharmacy intern, with or without established proof of actual injury;
  - (e) Engaging in grossly negligent professional conduct, with or without established proof of actual injury;
  - (f) Except as provided in KRS 315.500, selling, transferring, dispensing, ingesting, or administering a drug for which a prescription drug order is required, without having first received a prescription drug order for the drug;

- (g) Willfully or knowingly failing to maintain complete and accurate records of all drugs received, dispensed, or disposed of in compliance with federal and state laws, rules, or administrative regulations;
  - (h) Obtaining any remuneration by fraud, misrepresentation, or deception;
  - (i) Accessing or attempting to access confidential patient information for persons other than those with whom a pharmacist has a current pharmacist-patient relationship and where such information is necessary to the pharmacist to provide pharmacy care; or
  - (j) Failing to exercise appropriate professional judgment in determining whether a prescription drug order is lawful.
- (3) Unprofessional or unethical conduct includes but is not limited to the following acts of a home medical equipment and services provider:
- (a) Engaging in conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a sick or disabled person, or engaging in conduct which substantially departs from accepted standards of providing home medical equipment and services ordinarily exercised by a home medical equipment and services provider, with or without established proof of actual injury;
  - (b) Engaging in grossly negligent professional conduct, with or without established proof of actual injury;
  - (c) Obtaining any remuneration by fraud, misrepresentation, or deception;
  - (d) Providing home medical equipment and services that carry a legend or require a prescription without a medical order from a licensed health care practitioner; or
  - (e) Willfully or knowingly failing to maintain complete and accurate records of home medical equipment and services provided in compliance with federal and state laws, rules, or administrative regulations.
- (4) Any licensee, permit holder, or certificate holder entering an "Alford" plea, pleading nolo contendere, or who is found guilty of a violation prescribed in subsection (1)(c) of this section shall within thirty (30) days notify the board of that plea or conviction. Failure to do so shall be grounds for suspension or revocation of the license, certificate, or permit.
- (5) Any person whose license, permit, or certificate has been revoked in accordance with the provisions of this section, may petition the board for reinstatement. The petition shall be made in writing and in a form prescribed by the board. The board shall investigate all reinstatement petitions, and the board may reinstate a license, permit, or certificate upon showing that the former holder has been rehabilitated and is again able to engage in the practice of pharmacy or to provide home medical equipment and services with reasonable skill, competency, and safety to the public. Reinstatement may be on the terms and conditions that the board, based on competent evidence, reasonably believes necessary to protect the health and welfare of the citizens of the Commonwealth.
- (6) Upon exercising the power of revocation provided for in subsection (1) of this

section, the board may reasonably prohibit any petition for reinstatement for a period up to and including five (5) years.

- (7) Any licensee, permit holder, or certificate holder who is disciplined under this section for a minor violation may request in writing that the board expunge the minor violation from the licensee's, permit holder's, or certificate holder's permanent record.
  - (a) The request for expungement may be filed no sooner than three (3) years after the date on which the licensee, permit holder, or certificate holder has completed disciplinary sanctions imposed and if the licensee, permit holder, or certificate holder has not been disciplined for any subsequent violation of the same nature within this period of time.
  - (b) No person may have his or her record expunged under this section more than once.

The board shall promulgate administrative regulations under KRS Chapter 13A to establish violations which are minor violations under this subsection. A violation shall be deemed a minor violation if it does not demonstrate a serious inability to practice the profession; assist in the practice of pharmacy; provide home medical equipment and services; adversely affect the public health, safety, or welfare; or result in economic or physical harm to a person; or create a significant threat of such harm.

**Effective:** July 12, 2012

**History:** Amended 2012 Ky. Acts ch. 73, sec. 11, effective July 12, 2012. -- Amended 2010 Ky. Acts ch. 22, sec. 7, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 148, sec. 8, effective July 15, 2008. -- Amended 2005 Ky. Acts ch. 99, sec. 598, effective June 20, 2005. -- Amended 2003 Ky. Acts ch. 51, sec. 4, effective June 24, 2003. -- Amended 2002 Ky. Acts ch. 335, sec. 1, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 426, sec. 549, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 257, sec. 14, effective July 15, 1996. --Created 1982 Ky. Acts ch. 191, sec. 11, effective July 15, 1982.

**Legislative Research Commission Note (7/12/2012).** Under the authority of KRS 7.136(1), the Reviser of Statutes has corrected manifest clerical or typographical errors in this statute during codification. The meaning of the text was not changed.