

**OPEN RECORDS POLICY
FOR THE
KENTUCKY BOARD OF PHARMACY**

I. GENERAL INFORMATION

Office Location The offices of the Kentucky Board of Pharmacy - are located in the State Office Building Annex at 125 Holmes Street, Suite 300, Frankfort, KY 40601.

Hours of Operation The Board is open for business from Monday through Friday, excluding legal holidays, from 8:00 a.m. - 4:30 p.m.

Official Custodian The Official Custodian of the Board's records is the Executive Director of the Kentucky Board of Pharmacy.

Mailing address: KY Bd. of Pharmacy
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Fees \$.10/page copied
 \$5.00/CD of Board proceedings

II. REQUIREMENTS FOR REQUESTS

1. Pursuant to KRS 61.876, an applicant shall submit his/her request to the Official Custodian upon the standardized form developed by the Attorney General, and available at: <https://ag.ky.gov>

2. The request may be hand-delivered, mailed, e-mailed or sent by fax to the Official Custodian's attention at the Board's offices.
3. The applicant shall specifically describe the record(s) requested. A request will be denied if the Official Custodian cannot identify the record(s) from the request.
 - ❖ Note: The Board's business is to license and discipline licensees. In furtherance of its purpose, records (including correspondence) are maintained primarily according to applicant/licensee name, license number or case number.
 - ❖ Caution: A request must be specific enough to allow the Official Custodian to identify, search and locate the record in question. Open-ended "any-and-all" requests may not be sufficiently specific to allow the Official Custodian to identify, search and locate responsive records and may place an unreasonable burden on the agency. Such requests may be denied. 13-ORD-077; 08-ORD-058; 99-ORD-14; 96-ORD-101.
4. The applicant shall certify upon the request that he/she is not a party to a pending lawsuit or has not made a filing in a pending lawsuit or an appeal of a lawsuit with the Commonwealth or any public agency.
 - ❖ Note: Pursuant to KRS 61.872, records otherwise obtainable through the civil discovery process in a pending lawsuit shall not be subject to inspection by a party (or a person or entity acting on behalf of a party) to that civil lawsuit with the Commonwealth or any public agency, unless so ordered by a court of competent jurisdiction.
5. If the Board accepts a request via e-mail, it shall not be required to respond via e-mail. Many responses will be mailed because some requested records must be reduced to hard copy in order to appropriately redact and withhold exempt information contained therein.
6. The Official Custodian may deny requests which would place an unreasonable burden in producing Board records or if the Official Custodian has reason to believe that repeated requests are intended

to disrupt other essential functions of the agency. Any questions regarding such requests may be resolved by the General Counsel.

7. The Official Custodian may deny a request to any person or entity not a "Resident of the Commonwealth," as that term is defined in KRS 61.870(10).

III. PROCEDURES FOR RESPONDING TO OPEN RECORD REQUESTS

A. PROCESSING

1. Within 5 days (excluding Saturdays, Sundays and legal holidays) after receipt of the request, the Official Custodian shall determine whether to comply with the request and shall notify the applicant in writing.
2. If the record requested is not one maintained by the Board, but the Official Custodian knows of another agency which has the record, the Official Custodian shall notify the applicant and furnish the name and location of that agency.
4. If the record requested is in public use, in storage or not otherwise available, the Official Custodian shall notify the applicant of that fact. If possible, the Official Custodian shall designate a place, time and date for inspection of the record(s), not to exceed 5 business days after the receipt of the request. If not possible, the Official Custodian shall provide a detailed explanation for the delay and shall give the time, place and earliest date on which the public record will be available for inspection.

B. ON-SITE INSPECTION FACILITY

The Board designates the Hearing Room or Board Room, as assigned by staff, as the facilities for on-site inspection of records.

C. METHODS OF INSPECTION

The Official Custodian may permit inspection by one of the following methods:

1. On-site inspection during regular office hours. The applicant may make abstracts and/or memoranda of the records while on-site.

After inspection, the applicant may request copies be made of the records. The Official Custodian may require payment of applicable fees before providing the copies. No one may remove original copies of the Board's records from its offices without written permission of the Executive Director.

2. Mailing copies of the requested records.
The Official Custodian may require receipt of all applicable fees and the cost of mailing before mailing the copies.
3. The Official Custodian may be able to satisfy the request by simply notifying the applicant that there are no records at the Board corresponding to the request.

IV. BOARD MATERIALS SUBJECT TO INSPECTION

Subject to the exemptions set out in Section V, the following materials are subject to inspection:

1. Application for licensing (initial and renewal), including academic credentials and former employment.
2. Board/committee minutes, after they have been approved by the Board/committee. Helm v. Citizens to Protect Prospect Area, 864 S.W.2d 312 (Ky. App. 1993)
3. Board newsletters.
4. Investigative Report(s), where the Case Review Panel has voted to dismiss the case take pursuant to 201 KAR 2:061.
5. Investigative Report(s) where the Case Review Panel has voted to issue a letter or reprimand or letter of concern pursuant to 201 KAR 2:061.
6. Investigative Report(s) from cases where a final order has been issued by the Kentucky Board of Pharmacy.

7. Pleadings filed as part of administrative proceedings pursuant to a formal Complaint.
8. Agreed Orders resolving disciplinary matters.
9. Electronic recordings of disciplinary proceedings.
10. Records relating to the applicant, except preliminary investigative materials, the work product of the Board's counsel and/or personal notes, observations, or conclusions of agency staff before adoption by the Board or Case Review Panel.

V. BOARD MATERIALS EXEMPT FROM INSPECTION

The following materials are exempt from inspection:

1. Personal Information

The following personal information concerning applicant, licensees or former licensees may be exempt from inspection:

- a. Dates and places of birth
- b. Age
- c. Social security numbers
- d. DEA numbers
- e. Credit card numbers
- f. Home addresses
- g. home or cell phone numbers
- h. Marital status
- i. Number of dependents
- j. Names of family members
- k. Wage rate
- l. Gender
- m. National origin
- n. Race
- o. E-mail addresses

Reason for Denial: Personal Information - KRS 61.878(1)(a); OAG 91-81; OAG 91-202; Zink v. Commonwealth, 902 S.W.2d 825 (Ky. App. 1995)

2. Patient Identity
Reason for Denial: Personal Information - KRS 61.878(1)(a); KRS 311.591(10); and Information Exempted by Federal Law, including HIPAA – KRS 61.878(1)(k)
3. Medical Records, Including Any Reports of Neuropsychological or Psychiatric Examinations (even if conducted pursuant to Board order)
Reasons for Denial: (1) Not Public Records per Hardin County v. Valentine, 894 S.W.2d 151 (Ky. App. 1995); (2) Private Information - KRS 61.878(1)(a) and OAG 92-10; and (3) Information Exempted by Federal Law, including HIPAA – KRS 61.878(1)(k)
4. All information, reports, statements, correspondence or other documents furnished to or produced by the Kentucky Professional Recovery Network.
Reason for Denial: Statutory Exemption - KRS 61.878(1)(L) Participation in KYPRN does not make an otherwise public document, such as an Agreed Order, confidential.
5. Investigative Report(s)
Reason for Denial: Preliminary Investigation - KRS 61.878(1)(h); Kentucky State Board of Medical Licensure v. Courier-Journal, 663 S.W.2d 953 (Ky. App. 1983); KRS 13B.090(3)
NOTE: The Board's counsel may exercise discretion in releasing the investigative report(s), if such release would further the interests of fairness in the proceedings.
6. Correspondence With Private Individuals, Other than Correspondence Which is Intended to Give Notice of Final Action

Reason for Denial: Preliminary Matters - KRS 61.878(1)(i)

7. Preliminary Recommendations and Preliminary Memoranda, Until Adopted by the Board

Reasons for Denial: Preliminary Matters - KRS 61.878(1)(j)

8. General Counsel's Reports

Reasons for Denial: Statutory Exemption - KRS 61.878(1)L;
KRS13B.090(3)

9. Data compilations (tables, statistics, etc.) that have not been performed by the Board at the time of the request.

Reason for Denial: Record(s) not in existence in format requested - 96-ORD-53; OAG 90-101; OAG 90-100; OAG 89-45; OAG 88-79

10. Information Prohibited from Disclosure by State or Federal Law, including but not limited to HIPAA, 45 C.F.R. §60.02, KRS 311.377, KRS 311.605(2)(b) and KRS 311.619. Examples of such information include but are not limited to:

- Medical/psychiatric/impairment records
- KASPER reports
- National Practitioner Data Bank Reports
- Information to/from the KYPRN

Reason for Denial: Statutory/regulatory exemption - KRS 61.878(1)(k) and (L)

VI. PROCEDURE FOR DENYING REQUEST, IN WHOLE OR IN PART.

1. If a record contains exempt and non-exempt materials, the Official Custodian shall separate the exempted materials and make the non-exempted materials available for inspection, if possible. If such procedure would defeat the purpose of the exemption, the Official Custodian may decline to release the document.
2. Within 5 days (excluding Saturdays, Sundays and legal holidays) after receipt of the request, the Official Custodian shall determine whether to deny the request, in whole or in part, and

shall notify the applicant in writing. Notification of denial will also include the reasons for denial listed under each exemption. The Official Custodian may choose not to identify the documents or portions being denied, if he/she determines that the practice would defeat the exemption and the response is sufficient to otherwise demonstrate that the claimed exemption applies.

VII. ELECTRONIC FORMAT RECORDS

1. The Board is not required to maintain records in electronic format or to convert hard copy records to electronic format.
2. If the Board maintains particular records in electronic format *and* the records may be electronically redacted of any exempted material, the applicant may obtain such records in electronic format, rather than in hard copy format. Any records that must be reduced to hard copy (i.e. paper format) in order to be properly redacted, shall be provided in hard copy format.

VIII. COMMERCIAL PURPOSE REQUESTS

1. If the Legislature has not prohibited the use of requested records for commercial purposes, an applicant may request Board records for a commercial purpose.
2. Where an applicant has requested Board records for a commercial purpose, the Board may establish a reasonable fee for use of such record(s).
3. When an applicant requests Board records for a commercial purpose, the Board may require a certified statement from the applicant stating the specific commercial purpose for which the record(s) will be used.

The Board may also require the applicant to enter into a contract with the Board, permitting the use of the requested record(s) for the specified commercial purpose for the specified fee.

4. The fee charged by the Board for the commercial use of its records may be based on one or both of the following:
 - a. Cost to the Board of media, mechanical processing, and staff required to produce a copy of the record(s);
 - b. Cost to the Board of the creation, purchase, or other acquisition of the record.

5. It is unlawful for a person to obtain a copy of any Board record and:
 - a. Use it for a commercial purpose, without stating the commercial purpose, if the Board required a certified statement from the applicant;
 - b. Use it for a commercial purpose different than that specified in the certified statement and/or the contract; or
 - c. Use or allow its use for a commercial purpose, when the applicant requested the record(s) for a noncommercial purpose. This subsection (c) does not apply to news agency unless the news agency gave its express permission for that commercial use.

6. Any applicant who unlawfully uses Board records for a commercial purpose shall be liable to the Board for:
 - a. Three times the amount that would have been charged for the record(s) if the actual commercial purpose for which it was obtained or used had been stated;
 - b. Costs and reasonable attorney's fees; and
 - c. Any other penalty established by law.