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MEMORANDUM

TO: Eden S. Davis, General Counsel, Kentucky Board of Pharmacy

FROM: Emily Caudill, Regulations Compiler

RE: Proposed Amendment or New Regulation – 201 KAR 002:270

DATE: June 10, 2021

A copy of the administrative regulation listed above is enclosed for your files. This regulation is **tentatively** scheduled for review by the Administrative Regulation Review Subcommittee at its **September 2021** meeting. We will notify you of the date and time of this meeting once it has been scheduled.

Pursuant to KRS 13A.280, *if* comments are received during the public comment period, a Statement of Consideration or a one-month extension request for this regulation is due **by noon on September 15, 2021**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to the public hearing and public comment period and Statements of Consideration.

If you have questions, please contact us at RegsCompiler@LRC.ky.gov or (502) 564-8100.

Enclosures



1 BOARDS AND COMMISSIONS

2 Kentucky Board of Pharmacy

3 (Amendment)

4 201 KAR 2:270. Expungement.

5 RELATES TO: KRS 315.121(6), 315.191(1)(a)

6 STATUTORY AUTHORITY: KRS 315.121(6), 315.191(1)(a)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to
8 promulgate administrative regulations relating to subject matters governed by KRS Chapter 315.

9 KRS 315.121(6) requires the board to promulgate administrative regulations to establish violations
10 that are considered minor and subject to expungement. This administrative regulation establishes
11 the violations considered minor and the criteria and procedure for expungement.

12 Section 1. Definition. "Expungement" means that:

13 (1) The affected records shall be sealed;

14 (2) The proceedings to which they refer shall be deemed not to have occurred; and

15 (3) The affected party may properly represent that no record exists regarding the matter expunged.

16 Section 2. Minor Violations and Expungement Procedure.

17 (1) The following violations are to be considered minor in nature:

18 (a) Any unlicensed, ~~unregistered~~ or unpermitted practice occurring no more than seven (7) days
19 after the expiration of the license ~~registration~~, or permit due to failure to timely renew a license;

20 ~~registration~~, or permit

- 1 (b) Failure to timely obtain required continuing education; and
2 (c) Failure to comply with any provisions of 201 KAR 2:106 for licensed or permitted facility
3 [pharmacy, manufacturer, or distributor] closures.

4 (d) At the discretion of the board, any other offense:

- 5 (1) Not involving the diversion of controlled substances;
6 (2) Not demonstrating a serious inability to practice the profession or to assist in the
7 practice of pharmacy;
8 (3) Not adversely affecting public health, safety or welfare;
9 (4) Not resulting in economic or physical harm to a person; and
10 (5) Not creating a significant threat of economic or physical harm.

11

12 (2) A licensee, registrant, or permit holder seeking expungement of a record of a disciplinary
13 action resulting from a violation designated in subsection (1) of this section shall, in accordance
14 with KRS 315.121(6):

15 (a) Not have been the subject of a subsequent violation of the same nature for a period of three
16 (3) years after the date of completion of disciplinary sanctions imposed for the violation sought
17 to be expunged; and

18 (b) Submit a written request to the board.

19 (3) The board shall consider each request and shall, if the conditions of subsection (2) of this
20 section are satisfied, expunge every record under its custody relating to the subject disciplinary
21 order.

- 1 (4) The expungement of a record under this regulation is limited to the removal of records in the
- 2 board's custody and does not guarantee expungement of a record previously reported to the
- 3 National Practitioner's Data Bank.



LARRY A. HADLEY, R.Ph.
Executive Director
Kentucky Board of Pharmacy

June 8, 2021
DATE

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall be held on August 31, 2021 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, Phone (502) 564-7910, Fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

201 KAR 2:270, Expungement

Contact person: Larry Hadley

Contact Phone No.: 502-564-7910

Contact email: larry.hadley@ky.gov

1. Provide a brief summary of:

- a. What this administrative regulation does:
 - This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.
- b. The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide non-dispensing pharmacy services. Further, KRS 315.121 authorizes this statute and directs the board to promulgate regulations.
 - This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.
- c. How this administrative regulation conforms to the content of the authorizing statutes:
 - KRS 315.121 provides that any licensee, permit holder, or certificate holder who is disciplined for a minor violation may request in writing that the board expunge the violation from the licensee's, permit holder's or certificate holder's permanent record. This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.
- d. How this administrative regulation currently assists or will assist in the effective administration of the statutes:
 - This administrative regulation identifies minor violations and criteria and procedure for expungement set forth in KRS 315.121.

2. If this is an amendment to an existing administrative regulation, provide a brief summary of:

- a. How the amendment will change this existing administrative regulation:
 - Identify minor violations and criteria and procedure for expungement.
- b. The necessity of the amendment to this administrative regulation:
 - The criteria needed to be updated to further define minor offenses.
- c. How the amendment conforms to the content of the authorizing statutes:
 - KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

- d. How the amendment will assist in the effective administration of the statutes:
- The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by identifying minor violations and criteria and procedure for expungement.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

- The board anticipates licensees, permit holders and registrants will be presented an opportunity to have any minor offense on their record expunged pursuant to KRS 315.121.

4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- a. List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
- Pharmacies and pharmacists will have to familiarize themselves with amended language.
 - The amended language provides a new right or privilege to licensees, permit holders and registrants.
 - The board will help to educate pharmacists and pharmacies of these changes.
- b. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
- There are no expected costs for the entities identified to comply with the amendment.
- c. As a result of compliance, what benefits will accrue to the entities identified in question (3):
- This amendment provides any licensee, permit holder or registrant to petition the board for expungement of what fits the amended language for minor offenses.

5. Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

- Board revenues from pre-existing fees provide the funding for the implementation of the regulation.

7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

- No increase in fees or funding will be required because of this amendment.

8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

- This administrative regulation does not establish fees or directly or indirectly increase any fees.

9. TIERING: Is tiering applied? (Explain why tiering was or was not used)

- Tiering is not applied because the regulation is applicable to all pharmacists and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 201 KAR 2:270, Expungement

Contact Person: Larry Hadley

Contact Phone No.: 502-564-7910

Contact email: larry.hadley@ky.gov

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
 - The Kentucky Board of Pharmacy will be the only entity impacted by this administrative regulation.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
 - KRS 315.121(6), KRS 315.191(1)(a).
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
 - This administrative regulation will not generate revenue for the Board in the first year.
 - b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
 - This administrative regulation will not generate revenue for the Board in subsequent years.
 - c. How much will it cost to administer this program for the first year?
 - No costs are required to administer this program for the first year.
 - d. How much will it cost to administer this program for subsequent years?
 - No costs are required to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. N/A

Revenues (+/-): 0

Expenditures (+/-): 0