A Guide to Facility Ownership Change: When New Licensing/Permit Applications Are Required

Why does the Board require a new application with a change of ownership?

When an applicant receives a license/permit with the Board, the applicant assumes a duty to act in accordance with the pharmacy laws and regulations in Kentucky. In doing so, they assume liability if they fail to abide by the applicable standards. The license/permit number determines who is liable with the Board for any violations. If the holder of liability changes, then that must be reflected in Board records.

When has change of ownership occurred?

Focus on the type of organizational structure the facility has and the accompanying legal classification. The Board is only interested in *actual change* and to know when that occurs, it is essential to recognize how ownership change looks for different types of entities, and what actions can trigger changes.

Asset Sales

Background: Assets can be licenses, trade names, trade secrets, equipment, fixtures, etc. The buyer of the assets takes it completely, assuming none of the liabilities of the seller.
What the Board Requires: Must submit change of ownership application, $75 payment, and will result in a change in license/permit number.
Why?: While the seller may retain possession of the legal entity it began with, the buyer purchases an asset of the entity. If the asset is something that requires a Board permit/license, then it now has a new owner, and that owner must reapply with the Board as the new point for liability.

Sole Proprietorship Change

Background: Sole proprietorships have one individual that controls and owns the entity in its entirety. The one individual absorbs all liability.
What the Board Requires: Must submit a change of ownership application, $75 payment, and will result in a change in license/permit number.
Why?: If a partner is added to this type of entity, then that changes the legal structure as sole proprietorships, by definition, have only one owner. Also, if you were to changes owners, then the entire entity has changed hands and liability solely belongs to another person, not the same person that originally filed an application with the Board.

New Owner of a Facility (not a corporation or LLC)

Background: Facilities that are not corporations or LLCs have an organizational structure in which changes in ownership directly impact the holder of liability.
What the Board Requires: Must submit a change of ownership application, $75 payment, and will result in a change license/permit number.
Why?: Facilities whose ownership has a direct tie to liability will require a new license/permit number. An example of this would be a new individual or group of individuals buying a local pharmacy and continuing to operate it without ties to large corporations.

Adding New Officers/Owners in a Corporation

Background: Corporations are legal entities themselves, distinct from all the individuals involved. By filing articles of incorporation, the entity is created. The owners of the corporation are its shareholder/stockholders, but the key decision makers are the directors/officers.
What the Board Requires: Only requires notification to the Board and will not result in a license/permit change.
Why?: Corporations, unless designated as S corporations, do not have limits on the number of owners that they can have. Likewise, while usually three officers are required, there is no limit on the number that a corporation can have without impacting its legal structure. This means adding officers and owners will not change the ownership and it will not impact the liability for Board purposes.

Adding New Officers/Owners to an LLC

Background: LLCs are owned by members that each own a percentage of the business guided by their operating agreement.
What the Board Requires: Only requires notification to the Board and will not result in a license/permit change.
Why?: When you add to the LLC, a new member buys in. The business entity itself does not change, just the ownership percentages amongst the members shifts. The same members remain, and the LLC is still intact.

Sale of a Corporation

Background: One of the key features of a corporation, and why it is selected, is its perpetual existence. The corporation endures despite what may seem to be critical changes.
What the Board Requires: Only requires notification to the Board and will not result in a license/permit change.
Why?: Remember that the true owners of the corporation are its shareholders/stockholders. Ownership will remain the same for liability purposes until a corporation is dissolved and each shareholder/stockholders' shares are bought out.

Sale of Stock in a Corporation

Background: Public corporations have stock that is freely traded. There is no requirement that the stock buyers have any association with the corporation before investing.
What the Board Requires: No change of ownership application.
Why?: Shareholders/stockholders can easily transfer their interests in stock exchanges and to require new ownership status each time this occurred would undermine the corporate structure selected by this entity. Shareholders/stockholders are not responsible for the day-to-day operations of the corporations and serve no liability role for the Board. Sale of existing stock does not change the ownership structure of the corporation.

Beneficiaries of a Trust

Background: Legal ownership in the body of the trust depends on when the trustee is authorized to distribute the assets. The point of distribution depends on the terms of the trust.
What the Board Requires: When the beneficiary has actual possession, then there has been a change of ownership and a new license/permit must be issued.
Why?: The creator of the trust, the grantor, assigns a trustee to manage the assets in the body of the trust. The trustee holds legal title to everything in the body. Some trusts allow for distribution when the grantor dies, while others will create terms that guide when the trustee should distribute assets. Just because an individual is an intended beneficiary of the trust does not mean they have any legal title over its assets. Actual possession of trust assets occurs when the trustee is authorized to make the distribution to the beneficiary. When that occurs, ownership changes to the beneficiary and they have legal title, requiring a new application with the Board.

LLCs Becoming Corporations

Background: Kentucky is one of only fifteen states that won't allow a conversion, a statutory merger is required. Mergers require you to form a separate corporation from the LLC before the LLC can be "merged" into a corporation. What is critical for Board purposes, the merger statute under Kentucky's LLC Act states that all property, debts, liabilities, and obligations go to the new corporation. Further, the rights of creditors remain and any legal action against the business may commence as if there had been no merger at all (KRS Corp. § § 271B.11-060 and 275.365). This means that for liability considerations, ownership stays the same and it is possible to continue to the corporate form without nullifying a license.
What the Board Requires: Notification only.
Why?: While there are new tax filings to be made, there is no distinct LLC entity with the IRS. LLCs are usually treated as partnerships or disregarded entities. This can be complex in determining which change works for your business, but for Board purposes, liability may still be assessed in the same way, so no new application is required.