

**CHAPTER 335****(HB 249)**

AN ACT relating to the discipline of professionals.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 315.121 is amended to read as follows:

- (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 in the practice of pharmacy or the wholesale distribution or manufacturing of drugs 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 or drug 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, or pharmacy technician is incapable of engaging or assisting in the practice of pharmacy 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 or the wholesale distribution or manufacturing of drugs;
  - (g) Engaging in or aiding and abetting an individual to engage in the practice of pharmacy without a license or falsely using the title of "pharmacist," "pharmacist intern," or other term which might imply that the individual is a pharmacist or pharmacist intern;
  - (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; or

- (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.
- (2) Unprofessional or unethical conduct includes, but is not limited to, the following acts of a pharmacist or pharmacist intern:
- (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 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 or pharmacy intern 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) 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; or
  - (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.

- (3) 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.
- (4) 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 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.
- (5) 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.
- (6) ***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; 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.***

Section 2. KRS 320.310 is amended to read as follows:

- (1) The board may refuse to issue, refuse to renew, limit or restrict, revoke, or suspend a license, may place on probation, or reprimand a licensee, may order restitution, may impose a fine not to exceed one thousand dollars (\$1,000) for each violation of this chapter or the corresponding administrative regulations, or may impose any combination of these penalties if it finds that an applicant or a licensee has:
  - (a) Engaged in any practice of fraud or deceit in obtaining or attempting to obtain a license;
  - (b) Been convicted of a felony or misdemeanor involving moral turpitude. A record of the conviction or a certified copy of the record shall be conclusive evidence;
  - (c) Chronic or persistent inebriety or addiction to a drug habit to an extent that continued practice is dangerous to patients or to the public safety;
  - (d) Been granted a license upon a mistake of material fact;

- (e) Engaged in incompetence, as determined by the board;
  - (f) Practiced as an itinerant, peddled from door to door, established a temporary office, or practiced optometry outside of or away from his regular office or place of practice;
  - (g) Employed, procured, induced, aided, or abetted any person, not holding a Kentucky license, to practice optometry or in practicing optometry;
  - (h) Used the title "doctor" or its abbreviation without further qualifying this title or abbreviation with the word "optometrist" or suitable words or letters designating an optometry degree;
  - (i) Engaged in any conduct likely to deceive or defraud the public;
  - (j) Violated any order issued by the board;
  - (k) Had his license to practice optometry in any other jurisdiction revoked, suspended, limited, placed on conditions of probation, or subjected to any other disciplinary action by the licensing authority thereof;
  - (l) Prescribed any therapeutic agent in an amount that the optometrist knows, or should know, is excessive under accepted and prevailing standards, or which the optometrist knows, or has reason to know, will be used or is likely to be used other than for an accepted therapeutic purpose;
  - (m) Developed a physical or mental disability, or other condition, which renders the continued practice by the optometrist dangerous to patients or the public; or
  - (n) Violated any statute under this chapter or administrative regulation promulgated under those statutes.
- (2) Nothing in this section shall prevent an optometrist from establishing branch offices if each office contains minimum equipment as required by administrative regulation of the board, ensures patient care as necessary, and has a Kentucky licensed optometrist in charge of the office.
- (3) ***Any licensee, permit holder, or certificate holder who is disciplined under this chapter 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 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 chapter 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; 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.***

SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Any licensee, permit holder, or certificate holder who is disciplined under this chapter 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 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 chapter more than once.*
- (2) *The board shall promulgate administrative regulations under KRS Chapter 13A to establish violations which are minor violations under this section. A violation shall be deemed a minor violation if it does not demonstrate a serious inability to practice the profession; 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.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 313 IS CREATED TO READ AS FOLLOWS:

- (1) *Any licensee, permit holder, or certificate holder who is disciplined under this chapter 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 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 chapter more than once.*
- (2) *The board shall promulgate administrative regulations under KRS Chapter 13A to establish violations which are minor violations under this section. A violation shall be deemed a minor violation if it does not demonstrate a serious inability to practice the profession; 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.*

Approved April 11, 2002