

BOARD AND COMMISSIONS
Board of Pharmacy
(New Administrative Regulation)

201 KAR 2:470. Change of ownership.

RELATES TO: KRS 315.035, 315.036(1), 315.340(6), 315.350(4), 315.405(5), 315.4104(1)

STATUTORY AUTHORITY: 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: 315.191(1) authorizes the board to promulgate administrative regulations to regulate pharmacists, pharmacies, wholesalers and manufacturers. KRS 315.035 discusses changes of ownership of a pharmacy and requires notice to be provided no fewer than five (5) days before the transaction occurs and authorizes a buyer to operate under a seller's permit pending the application. Due to the nature of business structures, it is not clear when a change of ownership of a regulated entity is considered to occur, and therefore this administrative regulation provides clarity for making those determinations.

Section 1. Change of entity ownership requiring a new license or permit means:

- (1) Partnership. In the case of a partnership, the removal, addition, or substitution of a partner.
- (2) Unincorporated sole proprietorship. In the case of an unincorporated sole proprietorship, the transfer of title and property to another party.
- (3) Corporation.
 - (a) In the case of a corporation, the merger of the licensed corporation into another corporation or the consolidation of two (2) or more corporations, resulting in the creation of a new corporation.
 - (b) Transfer of corporate stock or the merger of another corporation into the licensed corporation does not constitute change of entity ownership; however, notification pursuant to Section 2 of this administrative regulation shall be provided within thirty (30) days of the transaction occurring.
- (4) Limited liability company (LLC).
 - (a) In the case of an LLC, the merger of the licensed LLC into another LLC or the consolidation of two (2) or more LLCs, resulting in the creation of a new LLC.
 - (b) Transfer of company stock or the merger of another LLC into the licensed LLC does not constitute change of ownership; however, notification pursuant to Section 2 of this administrative regulation shall be provided within thirty (30) days of the transaction occurring.

Section 2. Procedure.

- (1) Written notice of the following shall be provided to the board no more than thirty (30) calendar days after the transaction occurs:
 - (a) A transfer of stock of greater than ten (10) percent in a non-publicly traded corporation which is the direct owner of an entity;
 - (b) A transfer of membership interest in a limited liability company which is the direct owner of an entity; and
 - (c) A change of corporate officer.
- (2) Written notification shall include providing a copy of the purchase agreement in the case of a stock or membership interest transfer. Purchase amounts and proprietary information may be redacted.

Section 3. Responsibility. A permit or license which has been served with a complaint and notice of hearing pursuant to KRS Chapter 13B for a pending disciplinary proceeding with

the Board of Pharmacy may not change ownership until the issuance of a final order by the board or upon the agreement of all parties to the terms of a settlement.

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: June 4, 2024 at 11:15 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2024, at 10:00 a.m. Eastern Time via zoom teleconference. 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, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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