

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:410. Expungement of records.

RELATES TO: KRS 314.131

STATUTORY AUTHORITY: KRS 314.131(1), ~~(10)~~~~(9)~~

CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with the requirements of 2025 RS HB 6, Section 8, because the amendments to this regulation will not have a major economic impact.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) and ~~(10)~~~~(9)~~ authorize the Board of Nursing to promulgate administrative regulations to establish which disciplinary records may be expunged. This administrative regulation establishes which records may be expunged and the procedure for expungement.

Section 1. Definitions ~~[Definition]~~.

(1) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice imposed by the board on any licensee or credential holder.

(2) "Expungement" means that all affected physical records shall be destroyed and affected electronic records removed from the board's computer systems so that the matter shall not appear on a license validation search via the board website or any other search of board records.~~[sealed and that the proceedings to which they refer shall be deemed never to have occurred.]~~

(3) "Complex reprimand" means disciplinary action that resulted in an encumbrance.

(4) "Plain reprimand" means a disciplinary action applicable to a licensee or credential holder that is not a complex reprimand.

(5) "Consent decree" means an agreement pursuant to 201 KAR 20:161, Section 2(5).

Section 2. The board shall not report cases that have been expunged to another state agency, board of nursing, or organization, and shall reply to any inquiry regarding the expunged records that no record exists on the matter and that the proceedings to which they refer shall be deemed never to have occurred. The individual whose records have been expunged may state that the proceedings to which they referred never occurred. ~~[A nurse whose record has been expunged may state that disciplinary records do not exist upon inquiry.]~~

Section 3. Upon a written request from an individual~~[a nurse]~~ against whom disciplinary action or a consent decree has been taken, the board shall expunge the disciplinary actions and consent decrees indicated below, subject to the exceptions set forth in Sections 4-6 of this administrative regulation~~[records relating to the following categories of disciplinary action]~~:

(1) Consent decrees that are at least three (3)~~[five (5)]~~ years old if all the terms of the consent decree have been met;

(2) Agreed orders and decisions that are at least five (5)~~[ten (10)]~~ years old and that resulted in a plain reprimand, if ~~[there has not been subsequent disciplinary action and]~~ ~~all [of]~~ the terms of the agreed order or decision have been met; and

(3) Agreed orders and decisions that are at least ten (10)~~[twenty (20)]~~ years old that resulted in a complex reprimand, if ~~[there has not been subsequent disciplinary action and]~~ ~~all [of]~~ the terms of the agreed order or decision have been met.

Section 4. The calculation of the time under Section 3 of this administrative regulation shall be tolled until the individual who is subject to a consent decree or disciplinary action has satisfied all requirements specified in the consent decree or disciplinary action and the length of time of the existence of the consent decree or disciplinary action shall be

measured from the date all requirements listed were met by the individual. [The board shall not report cases that have been expunged to another state agency, other board of nursing, or other organization.]

Section 5. Expungement of a consent decree or disciplinary action shall not occur if there is an open and active Board of Nursing investigation or disciplinary proceeding pending against the affected individual pursuant to 201 KAR 20:161 or 201 KAR 20:162.

Section 6. Expungement of a disciplinary action shall be unavailable if the affected individual has had subsequent disciplinary action that is also ineligible for expungement. Consideration regarding an individual's eligibility for expungement must always begin with assessment of the age and relevant tolling as to the most recent consent decree or disciplinary action.

Section 7. Without a request pursuant to Section 3 of this administrative regulation, the board may initiate expungement of records subject to the criteria set forth in Sections 3 through 7 of this administrative regulation.

AUDRIA DENKER, President

APPROVED BY AGENCY: June 26, 2025

FILED WITH LRC: July 8, 2025 at 9:53 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2025, at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2025, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 September 30, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300 Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets out which board orders are subject to expungement.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary because of KRS 314.131(10).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by setting out which board orders may be expunged.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by providing for which board orders may be expunged.

(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:

The amendment adds definitions to clarify what documents may be expunged. It provides that physical records that have been expunged may be destroyed; amends to track statutory expungement language; shortens the period before and expungement may be requested and that it does not start until the terms have been met, provides that an expungement may not be obtained if the individual has a pending investigation; and the most recent order must be eligible for expungement before older orders may be considered. The Board may expunge eligible orders that are otherwise a specific request from the licensee.

(b) The necessity of the amendment to this administrative regulation:

The administrative regulation is necessary to clarify expungement terms and requirements, provide the Board may remove of disciplinary records that are not publicly accessible.

(c) How the amendment conforms to the content of the authorizing statutes:

By clarifying the Board's expungement requirements.

(d) How the amendment will assist in the effective administration of the statutes:

By clarifying the Board's expungement requirements.

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

Individuals who have been licensed or credentialed by Board with disciplinary actions, number unknown.

(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:

An individual requesting expungement must make the request in writing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no cost to the person requesting expungement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The individual will receive closure for prior discipline after fulfilling the terms of the discipline and their record will be cleared of the action.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There is no additional cost.

(b) On a continuing basis:

There is no additional cost.

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

Agency funds.

(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 fee increase is necessary.

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

Fees will not be increased by this regulation.

(9) TIERING: Is tiering applied?

Tiering is not applied.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 314.131(1), (10).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Kentucky Board of Nursing.

(a) Estimate the following for the first year:

Expenditures:The Board currently spends ~\$4,300 a year archiving records at Kentucky Department for Library and Archives.

Revenues:No revenues to estimate.

Cost Savings:The Board will save money by not paying to archive and store records that are not publicly available. Initial estimate unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

They will not differ.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures:No expenditures to estimate.

Revenues:No revenues to estimate.

Cost Savings:No cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

They will not differ.

(4) Identify additional regulated entities not listed in questions (2) or (3):

(a) Estimate the following for the first year:

Expenditures:N/A.

Revenues:N/A.

Cost Savings:N/A.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There will be no difference to expenditures, revenues, or cost savings. N/A.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

None.

(b) Methodology and resources used to determine the fiscal impact:

None.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

This regulation will not have an overall adverse economic impact.

(b) The methodology and resources used to reach this conclusion:

N/A. (7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a): (a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(13): This regulation will not have a major economic impact. (b) The methodology and resources used to reach this conclusion: This regulation does not have a major impact on the entities identified in 3(a), 4(a), and 5(a).