

ARKANSAS REGISTER

Transmittal Sheet



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For Office Use Only: Effective Date _____ Code Number _____

Name of Agency _____
 Department _____
 Contact _____ E-mail _____ Phone _____
 Statutory Authority for Promulgating Rules _____

Rule Title: _____

Intended Effective Date		Date
<input type="checkbox"/> Emergency	Legal Notice Published	_____
<input type="checkbox"/> 10 Days After Filing	Final Date for Public Comment	_____
<input type="checkbox"/> Other _____	Reviewed by Legislative Council	_____
	Adopted by State Agency	_____

Electronic Copy of Rule Provided (per Act 1648 of 2001)

Electronic Copy of Rule to be e-mailed from: _____
Contact Person Email Address

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
 In Compliance with Act 434 of 1967 As Amended.

Signature

Phone Number E-mail Address

Title

Date

REGULATION 11- CRIMINAL BACKGROUND CHECKS

11-00-0001 – DEFINITIONS

- (a) “Board” means the Arkansas State Board of Pharmacy;
- (b) “Criminal background check” means a state and nation-wide criminal records check conducted by the Arkansas State Police and the Federal Bureau of Investigation, including the taking of fingerprints;
- (c) “Provisional license or registration” means a non-renewable, provisional license or registration that shall expire when the results of the criminal background check are received by the Board or 180 days after issue, whichever comes first. An approved license issued to a pharmacist approved for reciprocity is also subject to the provisions of Regulation 02-03-0001. (11/15/2003)

11-00-0002-BACKGROUND CHECK REQUIRED

- (a) The Board shall not issue an initial license/registration, or reinstate a license/registration until the state and federal criminal background checks conducted by the Arkansas State Police Identification Bureau and the Federal Bureau of Investigation have been completed.
- (b) The Board may issue a provisional license or registration to applicants for a new pharmacist or intern license, or for a new or reinstated pharmacy technician registration as provided in this Regulation. (11/15/2003)

11-00-0003-APPLICATION PROCEDURE

- (a)
 - (1) Effective March 1, 2004, prior to or contemporaneously with filing an application form for the applicable license or registration, each applicant for a new intern or pharmacist license, or a new or reinstated registration as a pharmacy technician issued by the Board, except as explicitly provided herein, shall apply, using forms furnished by the Board, to the Identification Bureau of the Arkansas State Police for state and national criminal background checks, to be conducted by the Arkansas State Police Identification Bureau and the Federal Bureau of Investigation.
 - (2)
 - (A) An applicant for a pharmacist license, who upon licensure will not practice pharmacy while physically present in the State of Arkansas, is not required to apply for criminal background checks.
 - (B) Before performing any practice of pharmacy while physically present within the State of Arkansas, each such an applicant shall:
 - (i) cause criminal background checks described herein to be conducted and delivered to the Board; and
 - (ii) obtain documentation from the Board of its approval of the pharmacist’s practice of pharmacy while physically present in Arkansas.
- (b) Each applicant shall, prior to or contemporaneously with applying for a license or registration identified in paragraph (a) of this section, submit to the State Police Identification Bureau the Board form authorizing the release of criminal background check reports to the Board and shall pay any applicable fees, associated with the

state and federal criminal background checks, to the Arkansas State Police. The release shall authorize the Identification Bureau of the Arkansas State Police to forward all information obtained concerning the applicant in regard to a conviction of any offense referred to in 11-00-0004 to the Board.

- (c) The state and federal criminal background checks conducted by the Arkansas State Police and the Federal Bureau of Investigation shall have been completed no earlier than twelve (12) months prior to the application for an initial license/registration issued by the Arkansas State Board of Pharmacy.
- (d) Background checks used to obtain a license or registration issued by the Board may be used for subsequent applications for another new license or registration issued by the Board for a period of up to four years after the date of the original license or registration. (11/15/2003)

11-00-0004-ELIGIBILITY FOR LICENSE/REGISTRATION

- (a) No person shall be eligible to receive or hold an intern or pharmacist license or a pharmacy technician registration issued by the Board if that person has pleaded guilty or *nolo contendere* to, or has been found guilty of any of the following offenses, regardless of whether an adjudication of guilt or sentencing or imposition of sentence is withheld, by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court (collectively “conviction”):
 - (1) Any felony;
 - (2) Any of the following:

Title	Ark. Code Number
Theft	5-36-103(b)(5), 104(c)(3) & (4), 105(b)(2)& (3), 106(e)(3), & 202
Forgery and Fraudulent Practices	5-37-101 – 525
Fraud Against Government	5-55-101 – 401
Fraudulent Issuance of Warrants	6-20-407
Employer, Employee liens	18-42-106
Obtaining Information by Fraudulent Representation	20-13-705
Insurance Holding Companies	23-63-522
False Reports, Motor Fuel Taxes	26-56-107
Fraudulent Applications	27-14-303

Uniform Controlled Substances Act	5-64-101 – 1303
Pharmacy Licensing Law	17-92-101 – 1007
Food, Drug & Cosmetics Act	20-56-205, 210, 211, 215, & 216
Uniform Narcotic Drug Act	20-64-201 et seq.
Controlled Substances & Legend Drugs	20-64-501 et seq.

- (b)
- (1) At the time of application for licensure/registration, an applicant who has such a conviction must cause the following certified documentation to be transmitted *directly* to the Board staff by the court or other entity or individual that is providing documentation about the applicant:
 - (A) Copies of court documents pertinent to conviction, i.e., information or indictment, judgments, orders, final rulings, etc. including documents specifying conviction and sanctions, and proof of completion of sanctions and penalties;
 - (B) Evidence regarding compliance with terms of probation, parole, restitution, or any other sanctions; and
 - (C) Status of any probation, parole, court-ordered restitution or any other sanctions.
 - (c) In addition, an applicant can submit any evidence of rehabilitation, examples of which include, without limitation:
 - (C) A letter from the applicant describing underlying circumstances for disciplinary action and/or arrest and conviction record as well as rehabilitation efforts or changes in life since that time to prevent future problems.
 - (D) Letters of reference from past and/or current employers.
 - (E) Letters of reference from pharmacy instructors concerning attendance, participation and performance in pharmacy programs.
 - (F) Letters from treatment/recovery program attesting to current sobriety and length of time of sobriety if there has been a history of drug or alcohol abuse.
 - (G) Letters of reference from other knowledgeable professionals, such as probation or parole officers.
 - (H) Fitness to practice release letter from appropriate health care professional.
 - (I) Any other pertinent information may be considered.
 - (d) Upon written request submitted with the application or after receipt of the criminal background check report, an applicant who has a criminal conviction may seek to have the conviction waived and application approved, subject to appropriate terms and conditions. The request for waiver shall be on a form provided by the Board and shall be accompanied by all documentation identified in paragraph (b) of this section that has not already been delivered to the Board. The request for waiver shall not be considered until the application, all fees, all the documentation identified in paragraph (b) of this section, both federal and state criminal background check reports, and a

request for wavier form stating the applicant's reasons why the conviction should be waived are received by the Executive Director. The Executive Director or his designee shall determine whether the applicant is rehabilitated, the conviction has served the intended disciplinary purpose and the applicant can practice or work in the capacity that is the subject of the application without undue risk to the public health, safety or welfare because of the subject conviction. The Executive Director, or his designee, shall consider all relevant data, including without limitation:

- (1) The age at which the crime was committed;
 - (2) The circumstances surrounding the crime;
 - (3) The length of time since the crime;
 - (4) Subsequent work history;
 - (5) Employment references;
 - (6) Character references, and
 - (7) Other evidence demonstrating that the applicant does not pose a threat to the public health, safety or welfare, including without limitation:
 - (A) Whether the applicant is on probation, parole, or probation as a result of suspended imposition of sentencing or similar deferral of judgment or sentencing, is in compliance with the terms and conditions of any such parole or probation, has complied with any terms and conditions of the judgment of conviction including payment of restitution and any fines, costs or other monetary payments.
 - (B) Whether the applicant has a currently suspended or revoked pharmacist or intern license, or pharmacy technician license or registration in any jurisdiction;
 - (C) The applicant's activities, employment, relationships and other facts since the conviction;
 - (D) Whether the applicant has provided information requested by the Board;
 - (E) Whether the applicant has falsified or misrepresented facts to the Board in the application or related procedure;
 - (F) Whether the applicant has a conviction that relates to the practice of pharmacy or other conduct regulated by the Board;
 - (G) Any Evidence of Rehabilitation as described above;
 - (H) Whether the applicant has more than one criminal conviction; or
 - (I) Whether the applicant has been pardoned or granted clemency by the governor, or the criminal conviction was expunged.
- (e) If an individual notifies the Executive Director in writing that he/she desires a hearing regarding a request for a waiver, the Executive Director will schedule the individual for a hearing. If no hearing is requested, the Executive Director or his designee will make a determination on the request upon the file documentation obtained by the Board and that submitted by the applicant.
- (f) The Executive Director or his designee shall notify the applicant in writing within seven (7) working days after determining whether to waive an applicant's conviction.
- (11/15/2003)

11-00-0005–BOARD WAIVER OF CONVICTION

- (a) In the event that the Executive Director or his designee determines not to waive a conviction, an applicant or person holding a provisional license or registration, who has a history of any conviction of an offense identified in 11-00-0004, can request a Board waiver of the conviction.
- (b) The request for a Board waiver shall be made in writing to the Executive Director and received on or before thirty (30) calendar days after the date of service of the Executive Director's denial of the applicant's request for waiver. The date of said service shall be the date that the denial of the waiver is mailed, certified mail, return receipt requested to the applicant. The request for waiver shall comply with the provisions of Section 11-00-0004.
- (c) If an individual notifies the Board in writing that he/she desires a hearing regarding his/her request for a waiver, the Board will schedule the individual for a hearing before the Board, a committee, or a designated referee or examiner.
- (d) If the individual does not notify the Board that he/she desires a hearing regarding their request for a waiver, the Board will not hold a hearing and may take action regarding their request for a waiver based upon the applicant's file documentation obtained by the Board and that submitted by the applicant.
- (e) The Board shall consider the matters as identified in section 11-00-0004 above in determining whether to waive a conviction and the Board's decision shall be served upon the applicant within seven working days after deciding whether to waive the conviction. (11/15/2003)

11-00-0006-PROVISIONAL LICENSE AND REGISTRATION

- (a)
 - (1) The Board may issue a provisional license or registration, limited to six months duration only to applicants who:
 - (A) certify on their Arkansas State Board of Pharmacy application that they have no criminal conviction; and
 - (B) meet all other qualifications for licensure or registration established by the Arkansas State Board of Pharmacy, and;
 - (C) certify that they have submitted an Arkansas State Police and FBI Criminal Background Check form and associated fees to the Arkansas State Police.
 - (2) The provisional license or registration shall permit the subject thereof to temporarily perform, pending the Board's receipt of the criminal background check report(s), the activities authorized by the license, permit or registration that is the subject of the application.
 - (3) An applicant who discloses any conviction identified in Section 11-00-0004 on the application form shall not be eligible to receive a provisional license or registration and will be considered for the applicable license or registration upon the Board's receipt of the criminal background check reports.
- (b)

- (1) Upon receipt of both the federal and state criminal background check reports containing no conviction of any offense identified in Section 11-00-0004, and upon the applicant meeting all other qualifications for the subject license/registration, the Board shall issue the appropriate license/registration to the applicant.
- (2)
 - (A) Upon receipt of either criminal background check report that contains a conviction of an offense identified in Section 11-00-0004, the Executive Director shall cause to be served upon the applicant notice of the reported conviction, the applicant's failure to disclose the conviction in the application, any other relevant facts or law, and the immediate revocation of the provisional license/registration pursuant to A.C.A. § 17-92-317, and the opportunity for a hearing.
 - (B) In order to obtain a hearing on the subject issues, an applicant shall serve a written request for a hearing upon the Executive Director within ten (10) days of service upon the applicant of the notice described in the preceding paragraph.
 - (C) After receipt of such a request from an applicant within the requisite time period, the Executive Director or his designee shall conduct a hearing and serve the decision resulting therefrom upon the applicant. The applicant shall produce at said hearing certified copies of the information/indictment and judgment of conviction or other dispositive order(s) regarding the subject conviction.
 - (D) In the event the decision resulting from the hearing described in the preceding subparagraph is adverse to the applicant, the applicant can serve a written request for a *de novo* hearing upon the Executive Director within thirty (30) days after service of said decision. Said *de novo* hearing shall be before the Board, members thereof or a designated referee or examiner. The Executive Director shall schedule and serve notice thereof upon the applicant.
- (c) Failure of an applicant to disclose any conviction of an offense identified in Regulation 11-00-0004 shall constitute grounds for the suspension, revocation, or denial of a license or registration.
- (d) Fees and applications.
 - (1) The license/registration fee shall be submitted with the application.
 - (2) The fee is not refundable. (11/15/2003)

11-00-0007-APPLICANT CONFIDENTIALITY

- (a) All reports obtained under these regulations are confidential and are restricted to the exclusive use of the Board. The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and are specifically exempt from disclosure under the Arkansas Freedom of Information Act (A.C.A. 25-19-101, et seq.)
- (b) Criminal conviction reports may be reviewed by or provided to the subject, the subject's attorney or other designee at the request of the subject as follows:

- (1) To the subject, in person, upon his producing positive verification acceptable to the Board of his/her identity, or by mail upon receipt of an acknowledged authorization in a form acceptable to the Board; the Board will mail a copy of the report by certified mail, return receipt requested, delivery restricted to the subject or his authorized agent at the address stated in the request.
- (2) To the subject's attorney or other designated individual, in person, upon presentation of an acknowledged authorization by the subject and presentation of positive verification of the attorney's or designated individual's identity, both of which are acceptable to the Board. (11/15/2003)

11-00-0008-CHALLENGES TO THE ACCURACY OF THE REPORT

- (a) The Board shall make determinations based on the information obtained from the Bureau and shall not be responsible for allegations regarding the disposition, expungement or accuracy of the information.
- (b) A person may challenge the completeness or accuracy of a report of criminal conviction information issued by the State Police Identification Bureau or the Federal Bureau of Investigation as provided in A.C.A. § 12-12-1013, as amended.
- (c) Upon receipt of a corrected criminal conviction report, the Board shall conduct a new evaluation of the report and the applicant's qualifications for the applicable license or registration. (11/15/2003)