

PHARMACY BOARD [657]

Notice of Intended Action

The Board of Pharmacy hereby proposes to adopt new Chapter 31, “Criminal Convictions,” and amend Chapter 2, “Pharmacist Licenses,” Chapter 33, “Military Service and Veteran Reciprocity,” and Chapter 36, “Discipline,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 147.10, 147.11, 147.44, 155A.11, and 155A.40 and 2020 Iowa Acts, House File 2627.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 147.10, 147.11, 147.44, 155A.11, and 155A.40 and 2020 Iowa Acts, House File 2627.

Purpose and Summary

The proposed amendments implement the provisions of House File 2627, enacted during the 2020 legislation session. The proposed amendments provide:

- a temporary pharmacist license for license transfer candidates who have met all other licensing requirements while the applicant schedules the jurisprudence examination,
- removal of the term “spouse” in the Military Service and Veteran Reciprocity chapter as a result of the removal of Iowa Code section 272C.4, subsection 13,
- update of the implementation references in the Military Service and Veteran Reciprocity chapter,
- a new chapter of rules to identify the use of a criminal conviction in determining an individual’s eligibility to apply for licensure or registration or in denying, revoking, or suspending a license or registration,
- the allowance of a pharmacist license transfer candidate to license transfer based on a current and active license in another state that isn’t required to be the original license by examination, and
- require a pharmacist who is seeking reactivation of their pharmacist license to complete a criminal history background check.

Fiscal Impact

This rule making has minimal fiscal impact to the state of Iowa. It is unknown how many pharmacist license transfer candidates will opt to request a temporary pharmacist license pending

their jurisprudence exam, which would result in the Board collecting a \$20 processing fee (for initial temporary licensure and an additional \$20 for renewal). It also is unknown how many individuals would seek eligibility determination due to their criminal conviction in advance of an application, which would result in the Board collecting a \$25 fee.

Jobs Impact

After analysis and review of this rule making, the impact on jobs cannot be determined.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Public Comment

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on _____, 2020. Comments should be directed to:

Sue Mears, RPh
Iowa Board of Pharmacy
400 SW 8th Street, Suite E
Des Moines, IA 50309

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1) “b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

ITEM 1. Amend rule 657—2.3(147,155A) as follows:

657—2.3(147,155A) License and criminal history record check required.

2.3(1) License required. Prior to engaging in the practice of pharmacy in Iowa, a pharmacist shall have an active Iowa pharmacist license pursuant to rule ~~657—2.4(147,155A); 657—2.8(155A), or 657—2.9(147,155A).~~

2.3(2) Criminal history record check required. Upon receipt of an ~~initial licensure~~ application for initial licensure pursuant to subrule 2.3(1); or for reactivation pursuant to rule 657—2.11(147,155A). the board shall provide a fingerprint packet to the applicant, who shall submit to the board the completed fingerprint packet and a signed waiver form to facilitate a national criminal history background check of the applicant. The cost of the evaluation of the fingerprint packet and the Iowa division of criminal investigation and United States Federal Bureau of Investigation criminal history background checks will be assessed to the applicant.

ITEM 2. Amend rule 657—2.9(147,155A) as follows:

657—2.9(147,155A) Licensure by license transfer. An applicant for license transfer must be a pharmacist licensed ~~by examination~~ in a state or territory of the United States, and the license ~~by examination~~ upon which the transfer is based must be in good standing at the time of the application and license transfer. All candidates shall take and pass the MPJE, Iowa Edition, as provided in subrule 2.4(1). Any candidate who fails to pass the examination shall be eligible for reexamination as provided in rule 657—2.7(147).

2.9(1) Eligibility. Each applicant for license transfer to this state who obtains the applicant's original license after January 1, 1980, must have passed the NABP Licensure Examination (NABPLEX), the NAPLEX, or an equivalent examination as determined by NABP.

a. ~~Application~~ Applications for license transfer. Each applicant for license transfer to Iowa shall complete the online application and pay the required fee as determined by NABP at nabp.pharmacy/programs and submit the board's online application and pay the required nonrefundable fee at pharmacy.iowa.gov.

b. No change.

2.9(2) through 2.9(5) No change.

ITEM 3. Amend rule 657—2.11(147,155A) as follows:

657—2.11(147,155A) License expiration and renewal. A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license, with the

exception that a new pharmacist license issued between April 1 and June 29 shall expire on the third thirtieth day of June following the date of issuance. The license renewal certificate shall be issued upon completion of the renewal application and payment of a nonrefundable fee of \$180.

2.11(1) *Late renewal penalty.* Failure to renew the license before July 1 following expiration shall require payment of the nonrefundable renewal fee and a nonrefundable penalty fee of \$180. Failure to renew the license before August 1 following expiration shall require payment of the nonrefundable renewal fee and a nonrefundable penalty fee of \$270. Failure to renew the license before September 1 following expiration shall require payment of the nonrefundable renewal fee and a nonrefundable penalty fee of \$360. Failure to renew the license before October 1 following expiration may require an appearance before the board and shall require payment of a nonrefundable ~~reactivation~~ renewal fee of \$630. The provisions of Iowa Code section 147.11 requiring reactivation shall apply to a license that is not renewed ~~within five months of the expiration date~~ before November 1 following expiration and shall include completion of a criminal history background check pursuant to subrule 2.3(2).

2.11(2) *Delinquent license.* If a license is not renewed before its expiration date, the license is delinquent and the licensee may not practice pharmacy in the state of Iowa until the licensee ~~reactivates~~ renews the delinquent license. ~~Reactivation~~ Renewal of a delinquent license shall include submission of a completed application and appropriate nonrefundable fees and may include requirements relating to the reactivation of an inactive license pursuant to subrule 2.13(2). A pharmacist who continues to practice pharmacy in Iowa without a current license may be subject to disciplinary sanctions pursuant to the provisions of 657—subrule 36.6(22).

ITEM 4. Adopt the following new rule 657—2.18(147,155A):

657—2.18(147,155A) Temporary license. Upon submission of the completed applications for licensure by license transfer pursuant to rule 657—2.9(147,155A), all required nonrefundable application fees, the completed fingerprint packet and signed waiver form to facilitate a national criminal history background check pursuant to subrule 2.3(2) and determination that the applicant satisfies all requirements for licensure with the exception of the jurisprudence examination, an applicant for licensure by license transfer may, pursuant to this rule, request a temporary pharmacist license while the applicant completes the MPJE, Iowa Edition, as required in subrule 2.9(3).

2.18(1) Fee. The nonrefundable fee for issuance or renewal of a temporary pharmacist license shall be \$20.

2.18(2) Duration. A temporary pharmacist license issued pursuant to this rule shall be valid for a period of three months. A temporary pharmacist license may be renewed one time for an additional period of three months. In order to qualify for renewal of the temporary license, the pharmacist must request renewal on a form provided by the board and demonstrate at least one attempt to take the MPJE, Iowa Edition, or demonstrate that the exam could not be scheduled within the initial temporary licensure period. A temporary pharmacist license is limited to one renewal.

2.18(3) Conversion of license. Upon successful completion of the MPJE, Iowa Edition, the pharmacist license shall cease to be a temporary license and shall be issued as a permanent pharmacist license subject to an expiration date in accordance with rule 657—2.11(147,155A).

ITEM 5. Adopt the following **new** 657—Chapter 31:

CHAPTER 31

Criminal Convictions

657—31.1(272C) Purpose and scope. The purpose of this chapter is to establish the process by which an individual’s criminal history is utilized by the board in a determination of eligibility for licensure or registration and in licensing and registration decisions. The chapter applies to individuals who are seeking licensure or registration with the board and individuals who are seeking a licensure or registration eligibility determination from the board based on their prior criminal convictions.

657—31.2(272C) Definitions. For the purpose of this chapter, the following definitions shall apply:

“*Board*” means the Iowa Board of Pharmacy.

“*Complete criminal record*” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“*Conviction*” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes *Alford* plea and pleas of *nolo contendere*.

“*Disqualifying offense*” means a conviction directly related to the duties and responsibilities of the practice of pharmacy. A conviction is directly related to the duties and responsibilities of the practice of pharmacy if either:

- the actions taken in furtherance of an offense are actions customarily performed within the scope of pharmacy practice, or
- the circumstances under which an offense was committed are circumstances customary to licensed pharmacy personnel.

“*License*” means any license or registration issued by the board to an individual.

657—31.3(272C) License application. Unless an applicant for licensure petitions the board for an eligibility determination pursuant to rule 657—31.4(272C), the convictions of the applicant will be reviewed when the board receives a completed license application.

31.3(1) Disclosure. An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

31.3(2) Submission of criminal record and personal statement. An applicant with convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of pharmacy in order for the license application to be considered complete.

31.3(3) Submission of evidence of rehabilitation. An applicant must submit all evidence of rehabilitation that the applicant wishes to be considered by the board as part of the license application.

31.3(4) Board authority. The board may deny a license if the applicant has a disqualifying offense unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

31.3(5) Licensure requirements. An applicant with disqualifying offenses that has been found rehabilitated must still satisfy all other requirements for licensure.

31.3(6) Nonrefundable fees. Any application fees paid will not be refunded if the license is denied.

657—31.4(272C) Eligibility determination. An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual’s convictions are disqualifying offenses that would render the individual

ineligible for licensure. An individual with criminal convictions is not required to petition the board for an eligibility determination prior to applying for licensure. To petition the board for an eligibility determination of whether one or more of the petitioner's convictions are disqualifying offenses, a petitioner shall submit all of the following:

1. A completed petition for eligibility determination form;
 2. The complete criminal record for each of the petitioner's convictions;
 3. A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the practice of pharmacy and why the board should find the petitioner rehabilitated;
 4. All evidence of rehabilitation that the petitioner wishes to be considered by the board;
- and
5. A nonrefundable fee of \$25.

657—31.5(272C) Appeal. A petitioner deemed ineligible for licensure or an applicant denied licensure due to a disqualifying offense may appeal the decision in the manner and timeframe set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board's rules governing contested case proceedings will apply unless otherwise specified in these rules. Failure to timely appeal will result in the board's written decision becoming a final order.

31.5(1) Presiding officer. An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

31.5(2) Closed hearing. The contested case hearing shall be closed to the public and the board's review of a proposed decision shall occur in closed session.

31.5(3) Burden of proof. The office of the attorney general shall represent the initial ineligibility determination or license denial of the board and shall have the burden of proof to establish that the convictions of the petitioner or applicant include at least one disqualifying offense. Upon the office of the attorney general satisfying this burden by a preponderance of the evidence, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

31.5(4) Judicial review. A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

657—31.6(272C) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

ITEM 6. Amend rule 657—33.1(85GA,ch1116) as follows:

657—33.1(85GA,~~ch1116~~272C) Definitions. For the purposes of this chapter, the following definitions shall apply:

“Military service” means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

“Military service applicant” means an individual requesting credit toward licensure or registration requirements for education, training, or service obtained or completed in military service.

~~*“Spouse”* means a spouse of an active duty member of the military forces of the United States.~~

“Veteran” means an individual who meets the definition of “veteran” in Iowa Code section 35.1(2).

ITEM 7. Amend rule 657—33.2(85GA,ch1116), parenthetical implementation, as follows:

657—33.2(272C)

ITEM 8. Amend rule 657—33.3(85GA,ch1116) as follows:

657—33.3(85GA,~~ch1116~~272C) Veteran or spouse licensure or registration. A veteran or spouse with an unrestricted pharmacist license in another jurisdiction may apply for pharmacist licensure in Iowa by license transfer pursuant to rule 657—2.9(147,155A) and this chapter. A

veteran ~~or spouse~~ must pass any required examinations to be eligible for pharmacist licensure by license transfer. A veteran ~~or spouse~~ may submit an application for pharmacist-intern registration pursuant to 657—Chapter 4 and this chapter. A veteran ~~or spouse~~ may submit an application for technician registration pursuant to 657—Chapter 3 and this chapter. A veteran ~~or spouse~~ may submit an application for pharmacy support person registration pursuant to 657—Chapter 5 and this chapter.

33.3(1) No change.

33.3(2) *Application requirements.* Such an application shall contain all of the information required of all applicants for licensure or registration who hold unrestricted licenses or registrations in other jurisdictions and who are applying for licensure or registration, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. In addition, the applicant shall provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2) ~~or as a spouse of an active duty member of the military forces of the United States.~~

33.3(3) *Equivalency determination.* Upon receipt of a fully completed application for licensure or registration, the board shall promptly determine if the requirements for licensure or registration of the jurisdiction where the veteran ~~or spouse~~ is licensed or registered are substantially equivalent to the requirements for licensure or registration in Iowa. The board may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, and postgraduate experiences.

33.3(4) *Licensure or registration approval.* The board shall promptly grant a license or registration, as appropriate, to the veteran ~~or spouse~~ if the applicant is licensed or registered in another jurisdiction whose licensure or registration requirements are substantially equivalent to those required in Iowa, unless the applicant is ineligible for licensure or registration based on other grounds, for example, the applicant's disciplinary or criminal background.

33.3(5) *Notification of additional requirements and provisional licensure or registration.* If the board determines that the veteran ~~or spouse~~ is licensed or registered in another jurisdiction whose licensure or registration requirements are not substantially equivalent to those required in Iowa, the board shall promptly inform the applicant of the additional experience, education, or examinations required for licensure or registration in Iowa. Unless the applicant is ineligible for

licensure or registration based on other grounds, such as disciplinary or criminal background, the following shall apply:

a. through *d.* No change.

ITEM 9. Amend rule 657—33.4(85GA,ch1116) as follows:

657—33.4(85GA,~~ch1116~~272C) **Request for contested case.** A military service applicant or a veteran ~~or spouse~~ who is aggrieved by the board’s decision to deny all or part of the military service credit application, a request for a license transfer, a request for a registration, or a request for provisional license or registration, or is aggrieved by the terms under which a provisional license or registration will be granted, may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board’s decision pursuant to 657—subrule 35.30(1). There shall be no fees or costs assessed against the military service applicant, or veteran ~~or spouse~~ in connection with a contested case conducted pursuant to this chapter.

ITEM 10. Amend **657—Chapter 33**, implementation sentence, as follows:

These rules are intended to implement ~~2014 Iowa Acts, chapter 1116, section 34~~ Iowa Code section 272C.4, subsections 11 and 12.

ITEM 11. Rescind subrule 36.6(5) and adopt the following **new** subrule in lieu thereof:

36.6(5) Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including *Alford* and nolo contendere pleas, or a finding or verdict of guilt, even if the adjudication of guilt is deferred, withheld or not entered. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction. An offense “directly relates” to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or the circumstances under which the offense was committed are circumstances customary to the profession.