

CHAPTER 31 CRIMINAL CONVICTIONS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

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. This 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.

[ARC 5750C, IAB 7/14/21, effective 8/18/21]

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 pleas 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 (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of pharmacy practice, or (2) 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.

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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 applicant's convictions 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 one or more 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 as part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the board.

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 one or more disqualifying offenses who 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.

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657—31.4(272C) Eligibility determination.

31.4(1) 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 a conviction is not required to petition the board for an eligibility determination prior to applying for licensure.

31.4(2) 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:

- a. A completed petition for eligibility determination form;
- b. The complete criminal record for each of the petitioner's convictions;
- c. 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;
- d. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- e. A nonrefundable fee of \$25.

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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 time frame 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. If the petitioner or applicant fails to timely appeal, the board's written decision will become 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 board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the convictions of the petitioner or applicant include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, 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.

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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.

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These rules are intended to implement Iowa Code sections 272C.1(8) and 272C.15.

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