

# Miscellaneous Statutes Related to Pharmacy

## Professions Generally – General Provisions

### 17-1-103. Registration, certification, and licensing for criminal offenders.

- (a)
  - (1) It is the policy of the State of Arkansas to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship.
  - (2) The public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful trade, occupation, or profession.
- (b)
  - (1)
    - (A) Subject to the provisions of subdivision (b)(2) of this section in determining eligibility under this section, a board, commission, department, or an agency may take into consideration conviction of certain crimes that have not been annulled, expunged, or pardoned.
    - (B) However, such convictions shall not operate as an automatic bar to registration, certification, or licensing for any trade, profession, or occupation.
  - (2) The following criminal records shall not be used, distributed, or disseminated in connection with an application for a registration, license, or certificate:
    - (A) Records of arrest not followed by a valid felony conviction by the courts;
    - (B) Convictions that have been annulled or expunged or pardoned by the Governor; and
    - (C) Misdemeanor convictions, except misdemeanor sex offenses and misdemeanors involving violence.
- (c) The board, commission, department, or agency shall state explicitly in writing the reasons for a decision that prohibits the applicant from practicing the trade, occupation, or profession if the decision is based, in whole or in part, on conviction of a felony.
- (d) For the purposes of this section, completion of the following shall be deemed prima facie evidence of sufficient rehabilitation:
  - (1) Probation or parole supervision; and
  - (2) A period of five (5) years after final discharge or release from any term of imprisonment in the state penitentiary without any subsequent conviction.

- (e) Any complaints concerning the violation of this section shall be adjudicated in accordance with the procedure set forth in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for administrative and judicial review.
- (f)
  - (1) This section shall apply to any board, commission, department, agency, or any other body that deals in licensing or regulating a profession, trade, or occupation in the State of Arkansas.
  - (2) It shall be the duty of the Secretary of State to make this section known to any board, commission, department, or agency affected by this section.
- (g) This section shall not apply to teacher licensure or certification or nursing licensure and certification as governed by §§ 6-17-410 and 17-87-312 respectively.

## **Occupational Criminal Background Checks**

### **17-3-102. Licensing restrictions based on criminal records.**

- (a) An individual is not eligible to receive or hold a license issued by a licensing entity if that individual has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses 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, unless the conviction was lawfully sealed under the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., or otherwise previously sealed, pardoned or expunged under prior law:
  - (1) Capital murder as prohibited in § 5-10-101;
  - (2) Murder in the first degree and second degree as prohibited in §§ 5-10-102 and 5-10-103;
  - (3) Manslaughter as prohibited in § 5-10-104;
  - (4) Negligent homicide as prohibited in § 5-10-105;
  - (5) Kidnapping as prohibited in § 5-11-102;
  - (6) False imprisonment in the first degree as prohibited in § 5-11-103;
  - (7) Permanent detention or restraint as prohibited in § 5-11-106;
  - (8) Robbery as prohibited in § 5-12-102;
  - (9) Aggravated robbery as prohibited in § 5-12-103;
  - (10) Battery in the first degree as prohibited in § 5-13-201;
  - (11) Aggravated assault as prohibited in § 5-13-204;
  - (12) Introduction of a controlled substance into the body of another person as prohibited in § 5-13-210;
  - (13) Aggravated assault upon a law enforcement officer or an employee of a correctional facility as prohibited in § 5-13-211, if a Class Y felony;
  - (14) Terroristic threatening in the first degree as prohibited in § 5-13-301;

- (15) Rape as prohibited in § 5-14-103;
- (16) Sexual indecency with a child as prohibited in § 5-14-110;
- (17) Sexual extortion as prohibited in § 5-14-113;
- (18) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
- (19) Incest as prohibited in § 5-26-202;
- (20) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;
- (21) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;
- (22) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;
- (23) Permitting the abuse of a minor as prohibited in § 5-27-221;
- (24) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print media depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;
- (25) Computer child pornography as prohibited in § 5-27-603;
- (26) Computer exploitation of a child in the first degree as prohibited in § 5-27-605;
- (27) Felony adult abuse as prohibited in § 5-28-103;
- (28) Theft of property as prohibited in § 5-36-103;
- (29) Theft by receiving as prohibited in § 5-36-106;
- (30) Arson as prohibited in § 5-38-301;
- (31) Burglary as prohibited in § 5-39-201;
- (32) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 et seq., as prohibited in the former § 5-64-401, and §§ 5-64-419 — 5-64-442;
- (33) Promotion of prostitution in the first degree as prohibited in § 5-70-104;
- (34) Stalking as prohibited in § 5-71-229;
- (35) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection; and
- (36) All other crimes referenced in this title.

- (b)
- (1) If an individual has been convicted of a crime listed in subsection (a) or subsection (e) of this section, a licensing entity may waive disqualification or revocation of a license based on the conviction if a request for a waiver is made by:
    - (A) An affected applicant for a license; or
    - (B) The individual holding a license subject to revocation.
  - (2) A basis upon which a waiver may be granted includes without limitation:
    - (A) The age at which the offense was committed;
    - (B) The circumstances surrounding the offense;
    - (C) The length of time since the offense was committed;
    - (D) Subsequent work history since the offense was committed;
    - (E) Employment references since the offense was committed;
    - (F) Character references since the offense was committed;
    - (G) Relevance of the offense to the occupational license; and
    - (H) Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.
  - (3) The waiver requirements of this section are not required for a renewal of a license if an individual has been convicted of a crime listed in subsection (a) of this section and has either:
    - (A) Completed the waiver requirements of this section at his or her initial licensure;
    - (B) Been licensed in this state before the enactment of subsection (a) of this section; or
    - (C) Attended a professional or occupational school, program, or training in pursuit of an occupational license before the enactment of subsection (a) of this section and would have been qualified to hold an occupational license on or before July 24, 2019.
- (c) If an individual has a valid criminal conviction for an offense that could disqualify the individual from receiving a license, the disqualification shall not be considered for more than five (5) years from the date of conviction or incarceration or on which probation ends, whichever date is the latest, if the individual:
- (A) Was not convicted for committing a violent or sexual offense; and
  - (B) Has not been convicted of any other offense during the five-year disqualification period.
- (d) A licensing entity shall not, as a basis upon which a license may be granted or denied:
- (1) Use vague or generic terms, including without limitation the phrases “moral turpitude” and “good character”; or
  - (2) Consider arrests without a subsequent conviction.

- (e) Due to the serious nature of the offenses, the following shall result in disqualification for licensure, regardless of the date of conviction or the date on which probation or incarceration ends unless a waiver is granted under subsection (b) of this section:
- (1) Capital murder as prohibited in § 5-10-101;
  - (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
  - (3) Kidnapping as prohibited in § 5-11-102;
  - (4) Aggravated assault upon a law enforcement officer or an employee of a correctional facility as prohibited in § 5-13-211, if a Class Y felony;
  - (5) Rape as prohibited in § 5-14-103;
  - (6) Sexual extortion as prohibited in § 5-14-113;
  - (7) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;
  - (8) Incest as prohibited in § 5-26-202;
  - (9) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;
  - (10) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;
  - (11) Adult abuse that constitutes a felony as prohibited in § 5-28-103;
  - (12) Arson as prohibited in § 5-38-301; and
  - (13) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print media depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403.
- (f) This chapter does not preclude a licensing entity from taking emergency action against a licensee as authorized under § 25-15-211 for the sake of public health, safety, or welfare.
- (g) The disqualification for an offense listed in subsection (a) of this section and the disqualification for an offense listed in subsection (e) of this section do not apply to:
- (1) An individual who holds a valid license on July 24, 2019;
  - (2) An individual who holds a valid license on or before July 24, 2019, but failed to renew his or her license for any reason; or
  - (3) An individual who was a student on or before July 24, 2019, in a professional or occupational school, program, or training in pursuit of an occupational license and would have been qualified to hold an occupational license on or before July 24, 2019.

- (h) This section does not apply to licensure or certification:
  - (1) Of professions not governed by this title;
  - (2) Of polygraph examiners and voice stress analysis examiners under § 17-39-101 et seq.;
  - (3) Of private investigators and private security agencies under the Private Security Agency, Private Investigator, and School Security Licensing and Credentialing Act, § 17-40-101 et seq.; or
  - (4) Of body artists under § 17-26-601 et seq.

## **Medical Professions – General Provisions**

### **17-80-102. Subpoena power of boards — Enforcement.**

- (a)
  - (1) The licensing and disciplining boards of the professions of the healing arts provided in this subtitle shall have the power to issue subpoenas and bring before the board as a witness any person in this state.
  - (2) The secretary or the investigative officer of the board shall issue a subpoena upon the request of any party to a proceeding pending before the board or at the request of the board.
  - (3) The writ shall be directed to the sheriff of the county where the witness resides or may be found.
  - (4) The writ may require the witness to bring with him or her any book, writing, or other thing under his or her control which he or she is bound by law to produce in evidence.
  - (5) Service of the writ shall be in the manner as now provided by statute for the service of subpoenas in civil cases.
- (b)
  - (1) A witness who has been served by subpoena in the manner provided by law and who shall have been paid or tendered the legal fees for travel and attendance as provided by law shall be obligated to attend for examination of the trial of the cause pending before the board.
  - (2) In the event a witness shall have been served with subpoenas as herein provided and fails to attend the hearing in obedience to the subpoena, the board may apply to the circuit court of the county wherein the board is having its meeting for an order causing the arrest of the witness and directing that the witness be brought before the court.
  - (3) The court shall have the power to punish the disobedient witness for contempt as now provided by law in the trial of civil cases.
  - (4) The disobedient witness shall be liable in damages for nonattendance to the trial or hearing as provided by Rev. Stat., ch. 158, § 9 [superseded].

**17-80-103. Immunity of board members and individuals acting on behalf of boards including expert witnesses.**

A member of a board or any individual acting on behalf of the board of any profession or occupation classified under the laws of the State of Arkansas as a profession of the healing arts, including an expert witness testifying or offering opinions, or both, regarding an administrative proceeding before a board of a profession or occupation classified as a profession of the healing arts, is not liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of the board if the board member or the individual acting on behalf of the board, including an expert witness testifying or offering opinions, or both, regarding an administrative proceeding before a board of a profession or occupation classified as a profession of the healing arts, acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which the action is taken or the recommendation is made.

**17-80-104. Continuing education requirements.**

- (a) The regulatory boards of the professions or occupations classified by the laws of the State of Arkansas as professions of the healing arts and for whom the General Assembly has heretofore established regulatory boards empowered to license persons who practice under conditions of licensure authorized by the General Assembly are authorized to adopt rules requiring the continuing education of the persons licensed by the board.
- (b) All rules establishing requirements for continuing education under the provisions of this section shall be adopted in the manner and method set out in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for the adoption of rules.
- (c) The regulatory boards shall establish by rule the number of hours of credit and the manner and methods of obtaining the hours of credit by its licensee.
- (d) In the event a licensee of the board does not complete the continuing education established by the board under the provisions of this section, the board is empowered to deny renewal of the license held by the licensee or after proper hearing take such action as it considers just and proper to compel compliance with its rules requiring continuing education.