REGULATION 11- CRIMINAL BACKGROUND CHECKS

11-00-0001 – DEFINITIONS

(a) "Board" means the Arkansas State Board of Pharmacy;

(b) "Criminal background check" means both a state criminal records check conducted by the Arkansas State Police ("state background check") and a nationwide criminal records check conducted by the Federal Bureau of Investigation ("federal background check"), 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 nationwide criminal background check are received by the Board or 180 days after issue, whichever comes first. (11/15/2003, Revised 7/10/2009)

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 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, Revised 7/10/2009)

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, shall apply for state and national criminal background checks, using forms furnished by and pursuant to instructions provided by the Board.

(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, a pharmacist ~~each such an applicant~~ shall:

(i) apply for state and federal criminal background checks described herein; 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 authorize 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, pursuant to written instructions provided by the Board.

(c) The state and federal criminal background checks may be used for an initial license/registration issued by the Arkansas State Board of Pharmacy for twelve (12) months after each check is completed.

(d) Background checks used to obtain an initial license or registration issued by the Board may be used for subsequent applications for a different 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, Revised 7/10/2009)

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) If an applicant who has such a conviction wishes to request a waiver of the conviction from the Board, he or she must submit a request for waiver form, along with the following documentation:

(A) Copies of court documents pertinent to each conviction, including complete copy of the court file, certified by the court clerk;

(B) Documents from probation/parole officers, court clerk or other officials proving that any probation, parole, restitution, rehabilitation, community service or other court-ordered sentence has been successfully completed or, if still ongoing, with information regarding the history of compliance and current status;

(C) A notarized statement by the applicant explaining the circumstances of each conviction and explaining why he or she should be granted a waiver;

(D) An applicant may submit any additional evidence of rehabilitation, including

(i) Letters of reference from past and/or current employers.

(ii) Letters of reference from pharmacy instructors concerning attendance, participation and performance in pharmacy programs.

(iii) Letters from treatment/recovery program attesting to current sobriety and length of time of sobriety, if appropriate.

(iv) Letters of reference from other knowledgeable professionals, such as probation or parole officers.

(v) Fitness to practice release letter from appropriate health care professional.

(vi) Any other pertinent information may be considered.

(c) The application and request for waiver shall not be considered until the application, all fees, all the documentation identified in paragraph (b) of this section, and both federal and state criminal background check reports are received by the Board.

(d) The Board's Informal Review Committee or its 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 Committee or its designee, shall consider all relevant data, including without limitation:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references, and

(G) Other evidence demonstrating that the applicant does not pose a threat to the public health, safety or welfare, including without limitation:

(i) 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.

(ii) Whether the applicant has a currently suspended or revoked pharmacist or intern license, or pharmacy technician license or registration in any jurisdiction;

(iii) The applicant's activities, employment, relationships and other facts since the conviction;

(iv) Whether the applicant has provided information requested by the Board;

(v) Whether the applicant has falsified or misrepresented facts to the Board in the application or related procedure;

(vi) Whether the applicant has a conviction that relates to the practice of pharmacy or other conduct regulated by the Board;

(vii) Any Evidence of Rehabilitation as described above;

(viii) Whether the applicant has more than one criminal conviction; or

(ix) Whether the applicant has been pardoned or granted clemency by the governor, or the criminal conviction was expunged.

(e) Each applicant with a disqualifying conviction who requests a waiver may appear before the Informal Review Committee or its designee or may choose to allow the Committee to make a determination on the request upon the file documentation obtained by the Board and that submitted by the applicant.

(f) No application with a disqualifying conviction will be processed until all required documentation has been received and the applicant's request has been submitted to the Informal Review Committee or its designee. (11/15/2003, Revised 03/01/2004 and 7/10/2009)

11-00-0005–BOARD WAIVER OF CONVICTION

(a)

In the event that the Informal Review Committee or its designee determines not to waive a conviction, an applicant can request a full Board hearing on the request for a waiver of the conviction.

The applicant's written request for a full Board hearing on the waiver must be received by the Board office no later than thirty (30) days after the Informal Review Committee's denial of the initial waiver request. The applicant will be scheduled to appear before the Board as soon as is practicable. The applicant may, if desired, submit additional documentation described in Regulation 11-00-0004(b), for the Board's consideration.

(c) The Board shall consider the matters as identified in section 11-00-0004 above in determining whether to waive a conviction. (11/15/2003, Revised 7/10/2009)

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)

i. certify that they have submitted an Arkansas State Police and FBI Criminal Background Check form and associated fees pursuant to written instructions provided by the Board.

ii. Or, at the Board's discretion, when state criminal background check reports are available within a reasonable time after application, and the Board has received a state criminal background check report on the applicant acceptable to the Board and pursuant to this regulation, and the applicant certifies that he/she has submitted an Arkansas State Police and FBI Criminal Background Check form and associated fees for the FBI check pursuant to written instructions provided by the Board.

(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. The hearing shall be conducted in accordance with the Administrative Procedures Act.

(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, Revised 03/01/2004 and 7/10/2009)

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)