

PHARMACY BOARD [657]

Notice of Intended Action

The Board of Pharmacy hereby proposes to amend Chapter 14, “Public Information and Inspection of Records,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 22.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 22.

Purpose and Summary

The proposed amendments are the result of an overall five year review as required in Iowa Code section 17A.7(2). The amendments update the manner in which records are maintained by the board and corrects Code references.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

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 _____, 2022. Comments should be directed to:

Sue Mears

Iowa Board of Pharmacy

400 SW 8th Street, Suite E

Des Moines, IA 50309

Sue.mears@iowa.gov

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 {item number}. Amend rule 657—14.1(22,124,155A), definitions of “Board” and “Custodian,” as follows:

657—14.1 (22,124,155A) Definitions. As used in this chapter:

“Board” means the Iowa board of pharmacy ~~examiners~~.

“Custodian” means the executive ~~secretary~~/director of the board.

ITEM {item number}. Amend rule 657—14.3(22,124,155A) as follows:

657—14.3 (22,124,155A) Requests for access to records.

14.3(1) Location of record. A request for access to a record should be directed to Executive ~~Secretary~~/Director, Iowa Board of Pharmacy ~~Examiners~~, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

14.3(2) and 14.3(3) No change.

14.3(4) Response to requests.

a. Access to an open record shall be provided in a timely manner upon request. If the size or nature of the request for access to an open record requires time for processing, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

b. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code section 22.8(4) or 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 657—14.4(22,124,155A) and other applicable provisions of law.

14.3(5) and 14.3(6) No change.

14.3(7) Fees.

a. Copying and postage costs. Price schedules for published materials and for ~~photocopies~~ copies of records supplied by the board shall be ~~prominently posted in the board office~~ provided on the board's website. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined by the custodian and ~~posted in on the board office~~ board's website. When the mailing of copies of records is requested, the costs of such mailing may also be charged to the requester.

b. Supervisory and retrieval fees. An hourly fee may be charged for board expenses in supervising the examination of and for the copying of requested records, or for the search and retrieval of such records, when the time required exceeds 15 minutes. The custodian shall ~~prominently post in the board office~~ provide on the board's website the hourly fees to be assessed. Hourly fees shall not be in excess of the compensation rate of a board employee who ordinarily would be appropriate and suitable to perform the function.

c. No change.

ITEM {item number}. Amend rule 657—14.6(22,124,155A) as follows:

657—14.6 (22,124,155A) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. This does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. A requester shall send the request to review such a record or the written statement of additions, dissents, or objections to Executive ~~Secretary/Director~~, Iowa Board of Pharmacy ~~Examiners~~, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. A request to review such a record or the written statement of additions,

dissents, or objections to the record shall be dated and signed by the requester and shall include the current address and telephone number of the requester or the requester's representative.

ITEM {item number}. Amend subrule 14.13(2) as follows:

14.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. to c. No change.

d. Criminal history or prior misconduct of an applicant for licensure (Iowa Code section ~~147.21(1)~~ 155A.40(3));

e. No change.

f. Information relating to the results of an examination for licensure, other than final score, except that information about the results of an examination may be provided to the person who took the examination (Iowa Code section ~~147.21(3)~~ 147.21(2));

g. No change.

h. Minutes of closed meetings of the board (Iowa Code section ~~21.5(4)~~ 21.5(5)"b");

i. Records of closed-session board disciplinary hearings (Iowa Code sections ~~272C.6(1)~~ and ~~21.5(4)~~ 21.5(5)"b");

j. No change.

k. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section ~~17A.3(1)"d"~~ 17A.3(1)"e";

l. to n. No change.

ITEM {item number}. Amend rule 657—14.14(22,124,155A) as follows:

657—14.14 (22,124,155A) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 657—14.1(22,124,155A). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. Indication that information in a record system is stored in or on more than one media format should not be interpreted to mean that all information is stored in all such formats. Some information comprising a record may be maintained in or on one type of media while other related information is maintained in or on another. The description also

indicates whether the record system contains any confidential information, and includes the legal authority for confidentiality. The record systems maintained by the board are:

14.14(1) *Records of board disciplinary hearings.* These records contain information about licensees, permit holders, and registrants who are the subject of a board disciplinary proceeding or other action. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 17A, 124, 155A, and 272C and is stored electronically, in computer, and on paper. The information contained in “closed session” board hearing records is confidential in whole or in part pursuant to Iowa Code sections ~~21.5(4)~~ 21.5(5) and 272C.6(1).

14.14(2) *Complaint reports.* Complaint and investigative files maintained by the board for purposes of licensee discipline contain information about licensees, permit holders, registrants, and the persons that they serve. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 124 and 155A and is stored electronically, in computer, and on paper. The information contained in these records is confidential in whole or in part pursuant to Iowa Code sections ~~22.7(18)~~ 22.7(5) and 272C.6(4).

14.14(3) *Continuing ~~pharmaceutical~~ pharmacy education records.* These records contain educational information about pharmacists licensed by the board. This information is collected pursuant to the authority granted in Iowa Code chapter 272C and is stored electronically, in computer, and on paper only.

14.14(4) *Controlled drug samples records.* These records contain information about controlled substance registrants who receive samples of controlled drugs from drug manufacturers. The records include the name, strength, and quantity of controlled drugs received by the registrant, and the identity of the manufacturer or distributor. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124 and is stored electronically, in computer, and on paper.

14.14(5) *Controlled substance registration records.* These records contain information about ~~pharmacies; individual practitioners including doctors of medicine and surgery, osteopathic medicine and surgery, dentistry, veterinary medicine, podiatry, and optometry; physician assistants; advanced registered nurse practitioners; drug manufacturers, distributors, importers, and exporters; researchers; hospitals and clinics; other health care facilities such as long term care and nursing care facilities; analytical laboratories; and teaching institutions~~ registrants of the board.

This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124 and is stored on electronically, in computer, and on paper ~~and in computer~~.

14.14(6) No change.

14.14(7) *Examination records.* These records contain information about applicants for any ~~of the following examinations~~ pharmacy competency or jurisprudence examination; ~~National Association of Boards of Pharmacy Licensure Examination, North American Pharmacist Licensure Examination, Multistate Pharmacy Jurisprudence Examination, Federal Drug Law Examination, and Iowa Drug Law Examination.~~ These records may also contain information about applicants licensed or pursuing licensure by reciprocity, score transfer, or other means. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 147 and 155A and is stored on paper, electronically, and in computer. The information contained in these records is confidential in part pursuant to Iowa Code sections 147.21, 22.7(1), and 22.7(19).

14.14(8) No change.

14.14(9) *Investigative reports.* These records contain information about the subjects of board investigations and the activities of board investigators. The records include a variety of attachments such as interviews, drug audits, medical records, pharmacy records, exhibits, police reports, incident reports, and investigators' observations. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 124, 126, 147, and 155A and is stored electronically, in computer, and on paper. The information contained in these records is confidential pursuant to Iowa Code sections 22.7(2), 22.7(5), 22.7(6), 22.7(9), and 22.7(19); ~~147.21(1); 124.504; and 272C.6(4).~~

14.14(10) *Licensure records.* These records contain information about ~~pharmacists, pharmacies, and wholesalers~~ individuals and entities that are licensed by the board. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 126, 147, and 155A and is stored electronically, on paper, in computer, and in the state archives.

14.14(11) *Personnel records.* These records contain personal information about board members and staff. This information is stored electronically, in computer, and on paper ~~and microfiche~~. The personal information contained in these records may be confidential in whole or in part pursuant to Iowa Code section 22.7(11).

14.14(12) No change.

14.14(13) Routine inspection reports. These records contain information about ~~pharmacies, controlled substance registrant offices, manufacturers and distributors, and wholesalers~~ licensees and registrants that are inspected by agents of the board to determine compliance with state and federal law. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 124 and 155A and is stored on paper, in computer, and electronically.

14.14(14) Notifications to the board. These records contain reports of theft or loss of controlled substances; of ~~pharmacy or drug wholesaler~~ business licensee or registrant openings, closings, and changes of ownership, location, or responsible person; of the sale or transfer of prescription drugs including controlled substances; of disasters, accidents, or emergencies affecting drugs; and of ~~pharmacists', pharmacist-interns', pharmacy technicians', and pharmacy support persons'~~ individual licensee or registrant names name, addresses address, or employment changes. This information is collected by the board pursuant to the authority granted in Iowa Code sections ~~155A.6, 155A.6A and 155A.19 and 2009 Iowa Code Supplement section 155A.6B~~ section 155A and is stored on paper, electronically, and in computer.

14.14(15) Precursor substances permit and distribution records. These records contain information about precursor substances handlers, both vendors and recipients, and information about the distribution, disposal, or destruction of precursor substances. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124B and is stored electronically, in computer, and on paper.

14.14(16) Pharmacy technician records. These records contain information about pharmacy technicians who are registered by the board. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 155A and is stored electronically, in computer, and on paper ~~and in computer.~~

14.14(17) No change.