

Expunging Board of Pharmacy Disciplinary Actions

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Abstract

Boards of pharmacy have the authority to discipline licensees whose actions fall short of practice standards. Disciplinary action may include license suspension, revocation, practice restrictions, fines and reprimands. Once discipline is levied against a board of pharmacy licensee, it is usually part of the licensee's permanent record. At least four states have created a pathway for individuals to seek expungement of previous disciplinary actions levied by a board of pharmacy. These states have variations on what violations may be expunged and when. Given the evolving approach to the regulation of pharmacists, more states may want to consider expungement pathways in the years ahead.

Background

Boards of pharmacy have many roles, from adopting regulations on the practice of pharmacy to issuing licenses to qualified pharmacists, technicians, and facilities.¹ Boards also have the authority to discipline licensees whose actions fall short of practice standards or who go beyond their scope of practice. Disciplinary action may include license suspension, revocation, practice restrictions, fines and reprimands.²

Nationwide, discipline by boards of pharmacy is rare. Depending on which data source is used, the discipline rate for board of pharmacy licensees ranges from 0.47% to 0.55%.³ In 2021, a total of 5,226 disciplinary records were submitted to the National Association of Boards of Pharmacy (NABP) Clearinghouse on both individuals and facilities licensed by boards of pharmacy.⁴ Just 2,115 of these were against pharmacists. The most frequently reported discipline (43.1%) for individual licensees was for "noncompliance with requirements."⁴

Grounds for discipline can range from serious (e.g., diversion of a controlled substance) to technical (e.g. failure to complete a continuing education requirement). Discipline is usually a one-way street. Once discipline is levied against a board of pharmacy licensee, it is usually part of the licensee's permanent record and attached to the publicly available license verification system. Further, licensees often have to report this discipline to prospective employers. Thus, discipline can have a serious impact on a licensee's career for years to come.

In 2022, Idaho created a pathway for individuals to seek expungement of previous disciplinary actions levied by the Board of Pharmacy. This manuscript will review the rationale for creating an expungement pathway and implementation considerations for other boards of pharmacy seeking to craft a similar pathway.

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Rationale for Expungement

The Idaho Board of Pharmacy (IBOP) had two primary arguments for creating a pathway for expungement: 1) A changing approach to regulation; and 2) A changing approach to discipline.

Changing Approach to Regulation: Standard of Care

The IBOP's focus was on regulation to a "standard of care" rather than prescriptive regulations.⁵⁻⁶ This meant that rather than attempting to delineate everything pharmacists can or cannot do in regulation, the IBOP takes into account the nuances of each case and whether or not the pharmacist did what other reasonably prudent pharmacists would do in the same or similar situations.⁷

Over the course of a couple years, the IBOP undertook a significant regulatory reform initiative to implement a standard of care approach. In so doing, the IBOP cut its regulations from approximately 100 pages to 25 pages, with significant reductions in the number of professional practice regulations and facility regulations.⁸ This led to a situation where pharmacists had been disciplined in recent years for laws that were judged to be no longer necessary.

For example, the IBOP eliminated the requirement that a pharmacy designate a pharmacist in charge (PIC), and some pharmacists had been disciplined for failing to register as a PIC.⁹ Similarly, the pharmacy technician ratio was eliminated, and some PIC's were disciplined for having too many technicians under their supervision.¹⁰⁻¹¹ The IBOP wrestled with the fairness of a pharmacist carrying permanent discipline for laws that no longer existed.

Changing Approach to Discipline: Corrective Action Plans

The IBOP spent time discussing the *Just Culture* approach to accountability, which changes how a regulatory boards approach discipline related to medication errors.¹² Specifically, patient safety is addressed in a manner where staff feels more safe in discussing, reporting, and acting on errors or mistakes.¹³ Medication errors are treated as a system issue rather than an individual failure and as such, rather than pursue a punitive

approach to discipline against a licensee, the culture is oriented to learning from failures to improve future outcomes.¹⁴

The IBOP learned about other health professional board approaches to discipline which leaned more heavily on informal corrective action plans (CAP) as opposed to formal, reportable discipline.¹⁵ In a CAP, an individual who completes such a plan resolves the case without triggering discipline on their license and without having a record reported to the National Practitioner's Data Bank. Complaints to regulatory boards are often sporadic and are not submitted for all errors. Thus, CAPs create a much fairer system and less punitive for individual pharmacists.

For example, an Idaho pharmacist who committed a dispensing error in the past could have faced a fine and a formal disciplinary action on their license. Under a CAP, however, the pharmacist completes a continuing education program on error identification and prevention, and the matter is resolved. IBOP leverages a six-hour course on patient safety, and completion of the course resolves the matter with the board. Thus, the CAP may be targeted to achieving better public safety outcomes in the future if the continuing education program is effective in preventing future errors by the pharmacist.

Comparison of State Laws on Expungement

The IBOP was aware of two other states that allowed expungement of board of pharmacy discipline in certain instances: Kentucky and South Carolina.¹⁶⁻¹⁷ In addition, Illinois had a broader expungement statute that applied to multiple regulated professions in the state.¹⁸ Table 1 compares the parameters of these states policies relative to the bill passed in Idaho in 2022.¹⁹

All four states require pharmacists seeking expungement to petition the board as the starting point. The onus is thus on the pharmacist to initiate the process, not the board. Only Illinois required a non-refundable fee for individuals seeking expungement.¹⁸ All four states have a cooling off period where expungement cannot be requested until a certain time after the disciplinary action occurred, or the pharmacist completed the requirements of their discipline. This varies from one to seven years.

The four states differed significantly in their approach to what may be expunged. Idaho requires boards to expunge two types of discipline: continuing education violations, and failure to renew a license. The remaining states did not set any such requirement. States alternate between providing wide discretion for boards to expunge and prohibiting expungement in certain cases. For example, South Carolina does not allow the board of pharmacy to expunge discipline in cases in which a pharmacist diverted controlled substances.¹⁷ Meanwhile, Illinois specifically allows expungement in cases in which the basis for discipline has been eliminated from law.¹⁸

All four states will remove records of discipline from their public websites and allow individuals who faced discipline to represent on future application forms that the violation has not occurred. States differ on handling reports to national databases, such as the National Practitioner's Data Bank. Idaho requires reporting the removal of discipline, whereas Illinois explicitly does not.¹⁹

Idaho's Experience with Expungement Legislation and Implementation

When the IBOP broached the creation of an expungement pathway with the legislature, there was support for creating a pathway for all licensing boards to expunge discipline, not just the board of pharmacy. The authority was added to the Occupational Licensing Reform Act, which addressed other topics related to universal licensure, reciprocity, and handling of criminal convictions.²⁰ Adding the expungement pathway to this act therefore applied to all licensed professions in the state, inclusive of pharmacists. The bill passed with broad bipartisan support.¹⁹

One initial concern some IBOP members expressed was that opening a floodgate of expungement applications could weigh down other board business. This has not proven to be the case with the IBOP. In the first 6 months since passage of the bill, the IBOP has handled two expungement cases, one related to a medication error, and another related to allowing a subordinate to work under an expired license.²¹ Expungement was granted in both cases. One of the individuals followed up with the IBOP to notify them that the National Practitioner Databank confirmed it had deleted her case, following the state action.

Simultaneously, the adoption of the CAP approach has reduced the number of formal disciplinary actions the IBOP has taken. Adverse actions reported to the National Practitioner Databank dropped from a high of 103 incidents in 2016, to an average of 12.5 cases in the six years that followed.²² The combined efforts of CAPs to resolve current cases and a pathway to expunge past disciplinary cases creates a practice environment that balances practitioner authority with accountability.

Conclusion

Given the evolving approach to the regulation of pharmacists, and the push for a *Just Culture* approach to discipline, more states may want to consider expungement pathways in the years ahead. Parameters such as those adopted in Idaho, Illinois, Kentucky and South Carolina may serve as useful starting points for other states. In the first year of implementation in Idaho, applications for expungement have not impeded other board business.

Conflicts of Interest: None

Disclaimer: The views expressed in this manuscript are those of the authors alone, and do not necessarily reflect those of their respective employers.

The opinions expressed in this paper are those of the authors.

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Table 1. Comparison of Board of Pharmacy Expungement Authority

Variable	Idaho ¹⁶	Illinois ¹⁵	Kentucky ¹³	South Carolina ¹⁴
Process to request expungement	<ul style="list-style-type: none"> Request shall be made in writing 	<ul style="list-style-type: none"> Submit an application on forms made available by the Department 	<ul style="list-style-type: none"> Request shall be made in writing 	<ul style="list-style-type: none"> File a petition with the board
Fee required	<ul style="list-style-type: none"> No fee 	<ul style="list-style-type: none"> \$175 non-refundable fee 	<ul style="list-style-type: none"> No fee 	<ul style="list-style-type: none"> No fee
Timeframe before expungement may be requested	<ul style="list-style-type: none"> Three years for violations that the board is required to expunge Seven years for all other applicable violations 	<ul style="list-style-type: none"> Three years from the offense or from license restoration, whichever is later 	<ul style="list-style-type: none"> Three years from the date the individual completed the disciplinary sanctions 	<ul style="list-style-type: none"> One year from the time of completion of any conditions imposed by the Board
Violations that may not be expunged	<ul style="list-style-type: none"> Conviction of a criminal offense 	<ul style="list-style-type: none"> Anything not explicitly stated as being allowed to be expunged 	<ul style="list-style-type: none"> Diversion of controlled substances Demonstrating a serious inability to practice Adversely affecting public health, safety, or welfare Resulting in economic or physical harm to a person Creating a significant threat of economic or physical harm 	<ul style="list-style-type: none"> Diversion of controlled substances and abuse or misuse Diversion of any controlled or non-controlled drugs to a third party Unlicensed practice Practicing while impaired Shipping into the state without a permit Distribution of misbranded and/or adulterated drugs
Violations that are required to be expunged by board	<ul style="list-style-type: none"> Failure to timely renew licensure Failure to complete required continuing education 	<ul style="list-style-type: none"> None specified 	<ul style="list-style-type: none"> None specified 	<ul style="list-style-type: none"> None specified
Violations that boards may expunge at their discretion	<ul style="list-style-type: none"> Not expressly specified; conceivably any violations excluding conviction of a criminal offense 	<ul style="list-style-type: none"> Failure to pay taxes Failure to complete continuing education Failure to renew license or registration on time Any grounds for discipline removed from licensing act. 	<ul style="list-style-type: none"> Unlicensed practice no more than seven days after expiration of license Failure to obtain required continuing education Failure to comply with permitted facility closures 	<ul style="list-style-type: none"> Not expressly specified; conceivably any violations excluding those expressly prohibited
Requirements for board if expungement is approved	<ul style="list-style-type: none"> Board shall report the expungement to “any national database where it previously reported the disciplinary action” Board shall not consider any expunged disciplinary action in future disciplinary matters unless it is the “same or substantially similar conduct.” 	<ul style="list-style-type: none"> Records are to be classified as confidential and not for public release. Department not required to report the removal of discipline to any national databases. 	<ul style="list-style-type: none"> Removal of the records in the board’s custody Does not guarantee the removal from the National Practitioner’s Data Bank 	<ul style="list-style-type: none"> The relevant records shall be sealed, subject to production on in response to lawful requests Records will not be available to the public and will be removed from the Board’s website
Allowances for individual who has violation expunged	<ul style="list-style-type: none"> Individual is not required to report the expunged disciplinary action on any future licensing application 	<ul style="list-style-type: none"> Violation considered expunged for reporting purposes 	<ul style="list-style-type: none"> Individual may “represent that no record exists regarding the matter expunged” 	<ul style="list-style-type: none"> The reprimand shall be deemed to have not occurred.