

## Part 7 Incapacity

### **58-17b-701 Mentally incompetent or incapacitated pharmacist -- Division action and procedures.**

- (1) As used in this section:
  - (a) "Incapacitated person" is a person who is incapacitated, as defined in Section 75-1-201.
  - (b) "Mental illness" is as defined in Section 26B-5-301.
- (2) If a court of competent jurisdiction determines a pharmacist is an incapacitated person, or that the pharmacist has a mental illness and is unable to safely engage in the practice of pharmacy, the director shall immediately suspend the license of the pharmacist upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the pharmacist, in writing, of the suspension.
- (3)
  - (a) If the division and a majority of the board find reasonable cause to believe a pharmacist, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing pharmacy with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the pharmacist with a notice of hearing on the sole issue of the capacity of the pharmacist to competently and safely engage in the practice of pharmacy.
  - (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).
- (4)
  - (a) Every pharmacist who accepts the privilege of being licensed under this chapter gives consent to:
    - (i) submitting at the pharmacist's own expense to an immediate mental or physical examination when directed in writing by the division, with the consent of a majority of the board, to do so; and
    - (ii) the admissibility of the reports of the examining practitioner's testimony or examination in any proceeding regarding the license of the pharmacist, and waives all objections on the ground the reports constitute a privileged communication.
  - (b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:
    - (i) the pharmacist has a mental illness, is incapacitated or otherwise unable to practice pharmacy with reasonable skill and safety; and
    - (ii) immediate action by the division and the board is necessary to prevent harm to the pharmacist's patients or the general public.
  - (c)
    - (i) Failure of a pharmacist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the pharmacist's license by written order of the director.
    - (ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to

the examination ordered under this section was due to circumstances beyond the control of the pharmacist and was not related directly to the illness or incapacity of the pharmacist.

- (5)
  - (a) A pharmacist whose license is suspended under Subsection (2) or (4) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.
  - (b) The hearing held under this Subsection (5) shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the pharmacist's patients or the general public.
- (6) A pharmacist whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the pharmacist, under procedures established by division rule, regarding any change in the pharmacist's condition, to determine whether:
  - (a) the pharmacist is or is not able to safely and competently engage in the practice of pharmacy; and
  - (b) the pharmacist is qualified to have the pharmacist's licensure to practice under this chapter restored completely or in part.

Amended by Chapter 329, 2023 General Session