



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

June 22, 2021

Ms. Susan McCoy
Executive Director
Mississippi Board of Pharmacy
6360 I-55 North, Suite 400
Jackson, Mississippi 39211

Re: Expunging Records of Board-Imposed Disciplinary Actions

Dear Ms. McCoy:

The Office of the Attorney General has received your request for an official opinion.

Issue Presented

Can the State Board of Pharmacy (“Board”) expunge records of disciplinary action imposed by the Board?

Brief Response

No. There is no authority for the Board to expunge records of its prior disciplinary action.

Legal Analysis

“Public boards created by legislative act have only such powers and authority as are expressly conferred by law, or as arise by necessary implication.” *Golding v. Salter*, 107 So. 2d 348, 354 (Miss. 1958). “Such powers are to be construed most strongly against an asserted right, if the right is not clearly given.” *Hemphill Constr. Co., Inc. v. City of Laurel*, 760 So. 2d 720, 723 (Miss. 2000) (citing *City of Jackson v. McMurry*, 288 So. 2d 23 (Miss. 1974)); MS AG Op., *Kipp* at * 1 (Oct. 26, 2018).

In a telephone conversation with you subsequent to your submittal, you confirmed that your use of the term “expunge” relates to the complete removal of all records of Board disciplinary action, rather than merely modifying a disciplinary order issued by the Board. Black’s Law Dictionary defines the term “expunge” as “[t]o remove from a record, list, or book; to erase or destroy.” *Expunge*, Black’s Law Dictionary (11th ed. 2019). The term envisions a wholesale erasure of information or documentation.

The Mississippi Pharmacy Practice Act (the “Act”) governs the practice of pharmacy in the state of Mississippi and created the Board. Miss. Code Ann. § 73-21-71 *et seq.* Within the Act, the Mississippi Legislature has set forth, in detailed manner, the process by which licensed pharmacists are to be disciplined by the Board and what events or conduct warrant such discipline. Miss. Code Ann. §§ 73-21-97–103. Section 73-21-97(1) provides that the Board may “refuse to issue or renew, or may suspend, reprimand, revoke or restrict the license, registration or permit” for specific conduct. Subsection (2) further provides: “In lieu of suspension, revocation or restriction of a license as provided for above, the board may warn or reprimand the offending pharmacist.” *Id.* There is no provision within the Act that expressly or impliedly authorizes the Board—either directly or through the Board’s regulatory authority set forth in Section 73-21-81¹—to expunge prior disciplinary action.²

Accordingly, it is the opinion of this office that the Board lacks authority to expunge Board-imposed disciplinary discipline.³

Notably, the Board enjoys broad authority to administer and enforce the provisions of its enabling legislation, including the process of licensee discipline. *See* Miss. Code Ann. § 73-21-81. The Board is not wholly without power to alter prior Board-imposed discipline, and it may, for example, modify its orders upon a change in circumstances, in accordance with Section 73-21-103(2):

Any person whose license, registration and/or permit has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right to petition the board at reasonable intervals for reinstatement of such license, registration and/or permit . . . Upon investigation and hearing, the board may, in its discretion, grant or deny such petition, *or it may modify its original*

¹ This office cannot, by official opinion, interpret regulations promulgated by a state agency. MS AG Op., *Seymour* at *1 (Aug. 30, 2018). Accordingly, this opinion does not analyze any of the Board’s regulations governing licensee discipline.

² In the context of expunging criminal records, expungement is traditionally only permissible where explicitly authorized by the Legislature. MS AG Op., *Smith* at *1 (Aug. 10, 2012) (“Expungements are statutory by nature and relate generally to specific convictions that may be expunged.”); *Hentz v. State* 152 So. 3d 1139, 1140 (Miss. 2014) (quoting *Caldwell v. State*, 564 So. 2d 1371, 1372 (Miss. 1990)) (“The Mississippi Legislature has ‘authorized expungement of criminal offender records in limited cases’”); *Ferguson v. Miss. Dep’t of Pub. Safety*, 278 So. 3d 1155, 1157 (Miss. 2019) (quoting *Polk v. State*, 150 So. 3d 967, 970 (Miss. 2014)) (“Expungement from official records [of] all records relating to an arrest, indictment, trial, and finding of guilt, in order to restore one to the status occupied prior thereto, is an altruistic objective for the legislative branch to contemplate and prescribe.”); *Polk*, 150 So. 3d at 968 (“[E]xpungement is an act of legislative grace.”). When asked to extend the judicial authority to expunge records beyond those instances specifically allowed by statute, Mississippi courts have declined to do so, holding that there is no inherent authority to expunge records. *Turner v. State*, 876 So. 2d 1056, 1059 (Miss. Ct. App. 2004) (citing *Caldwell*, 564 So. 2d at 1373).

³ Additionally, the Board is bound to comply with applicable laws governing the maintaining and retention of public records. *See e.g.*, Miss. Code Ann. § 25-61-1 *et seq.* Any true expungement of Board records could violate such laws. Moreover, this office is not aware of a way to facilitate the removal of disciplinary action reflected within the Board’s official minutes.

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finding to reflect any circumstances which have changed sufficiently to warrant such modifications

Miss. Code Ann. § 73-21-103(2) (emphasis added).

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Phil Carter*

Phil Carter
Special Assistant Attorney General

OFFICIAL OPINION