

3701-64-05

Findings of director; petition to remove a finding of neglect from the nurse aide registry.

- (A) The director shall make a finding concerning an allegation of abuse, neglect, or misappropriation on which a hearing was held under rule 3701-64-04 of the Administrative Code after the expiration of the period specified by paragraph (J) of that rule for filing objections and, if applicable, the expiration of the period for filing responses. The director's findings shall be based upon the hearing officer's recommendation, any written objections and responses, and the hearing record. If the accused failed to request a hearing within the time allowed by paragraph (A) of rule 3701-64-03 of the Administrative Code, the director may make a finding after the expiration of the thirty-day period.
- (B) The director shall not make a finding against the accused if neglect was caused by factors beyond his or her control. Factors beyond the control of the accused may include, but are not limited to, orders from his or her supervisor or failure of the long-term care facility or residential care facility to provide adequate staffing or supplies.
- (C) If the director finds that an accused, who is used by a long-term care facility as a nurse aide, has neglected or abused a resident or misappropriated property of a resident, the director shall notify all of the following by ordinary mail:
- (1) The accused;
 - (2) The long-term care facility where the incident occurred and any other long-term care facility known by the director to be using the accused as a nurse aide at the time of the director's finding; and
 - (3) The attorney general, county prosecutor, or other appropriate law enforcement official.
- In accordance with section 3721.32 of the Revised Code, the director shall include a statement which details his findings in the nurse aide registry established under that section.
- (D) If the director finds that an accused, who is used by a long-term care facility or residential care facility to provide services to residents other than as a nurse aide, has neglected or abused a resident or misappropriated property of a resident, the director shall notify all of the following by ordinary mail:
- (1) The accused;
 - (2) The facility where the incident occurred, and any other long-term care facility

or residential care facility known by the director to be using the accused to provide services to residents at the time of the director's finding;

- (3) Any appropriate professional licensing authority established under Title 47 of the Revised Code; and
- (4) The attorney general, county prosecutor, or other appropriate law enforcement official.

If the accused is not licensed under Title 47 of the Revised Code, the director also shall include a statement which details his findings in the nurse aide registry in accordance with section 3721.32 of the Revised Code.

(E) A nurse aide or other individual about whom a statement is required by paragraph (C) or (D) of this rule to be included in the nurse aide registry may provide the director with a statement which disputes the director's findings and which explains the circumstances of the allegation. The director shall include this statement in the nurse aide registry with the director's findings.

(F) If the director finds that alleged neglect or abuse of a resident or misappropriation of property of a resident cannot be substantiated, the director shall notify the accused and expunge all files and records of the investigation and the hearing by doing all of the following:

- (1) Removing and destroying the files and records, originals and copies, and deleting all index references;
- (2) Reporting to the accused the nature and extent of any information about the accused which has been transmitted to any other person or government entity by the director; and
- (3) Otherwise ensuring that any examination of the director's files and records in question show no record whatever with respect to the accused.

~~(G) When files and records have been expunged under paragraph (F) of this rule, all rights and privileges are restored, and the accused, the director, and any other person or government entity may properly reply to an inquiry that no such record exists as to the matter expunged.~~

~~(H)~~(G) The failure of the director to comply with any of the time limits specified in rules 3701-64-02 to 3701-64-05 of the Administrative Code shall not effect the validity of any finding made by the director under this rule.

(H) In accordance with division 3721.23(D)(2) of the Revised Code and in a form and manner prescribed by the director, not earlier than one year after the date of a finding of neglect, an individual found to have neglected a resident may petition the director to rescind the finding and remove the statement and any accompanying information from the nurse aide registry. The Director shall consider the petition.

(1) If, in the judgment of the director, the neglect was a singular occurrence and the employment and personal history of the individual does not evidence abuse or any other incident of neglect of residents, the director shall notify the individual and remove the statement and any accompanying information from the nurse aide registry;

(2) The director shall expunge all files and records of the investigation and the hearing, except the petition for rescission of the finding of neglect and the director's notice that the rescission has been approved; and

(3) A petition for rescission of a finding of neglect and the director's notice that the rescission has been approved are not public records for the purpose of section 149.43 of the Revised Code.

(I) When files and records have been expunged under paragraph (F) or (H) of this rule, all rights and privileges are restored, and the accused, the director, and any other person or government entity may properly reply to an inquiry that no such record exists as to the matter expunged.

Effective:

R.C. 119.032 review dates: 03/01/2011

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3721.26
Rule Amplifies: 3721.23
Prior Effective Dates: 1/10/1992, 6/11/01, 8/1/06