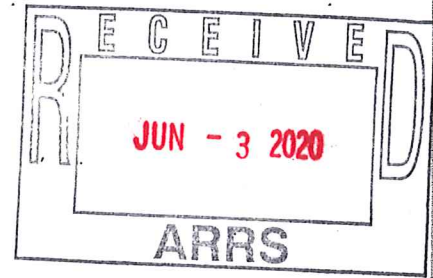




COMMONWEALTH OF KENTUCKY  
OFFICE OF THE SECRETARY OF STATE  
MICHAEL G. ADAMS



June 3, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Compiler  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: 30 KAR 8:005. Notary public application; requirements for notarial acts performed with respect to electronic records and for remotely located individuals; notary public discipline

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 30 KAR 8:005, the Secretary of State proposes the attached amendment to 30 KAR 8:005.

Sincerely,

Michael R. Wilson  
Director of Business & Deputy General Counsel

**Subcommittee Substitute**

**SECRETARY OF STATE  
(Amended After Comments)**

**30 KAR 8:005. Notary public application; requirements for notarial acts performed with respect to electronic records and for remotely located individuals; notary public discipline**~~[Notary Public applications and electronic and online registrations].~~

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.355, 423.390, 423.395, 423.415, 423.455

NECESSITY, FUNCTION, AND CONFORMITY: KRS **423.355** ~~[423.415, KRS 423.390]~~, 423.415, and 423.455 authorize the Secretary of State to promulgate administrative regulations to implement KRS **423.300** ~~[423.415]~~ to 423.455, **and KRS 423.390 requires the Secretary of State to promulgate administrative regulations to establish forms and procedures applicable to the registration of notaries public.** This ~~[emergency]~~ administrative regulation establishes definitions, prescribes the process of granting, renewing, conditioning, or denying a notary commission, establishes standards for the performance of notarial acts with respect to electronic records, establishes standards for the performance of online notarial acts, establishes standards for the retention of records ~~[and]~~ by notaries public authorized to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, and prescribes the manner of performing notarial acts for tangible records.

Section 1. Definitions. ~~[Words and terms defined in KRS 423.300 shall have the same meaning in this chapter. For the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.]~~

**(1)[(a)] "Digital Certificate" means an electronic record, issued by a third-party certificate authority, which certifies the ownership of a public key, rendering an electronic document as tamper-evident.**

**(2)[(b)] "Electronic record" means information contained in or on a medium that requires electricity to be perceived. ["Member of the notary public's immediate family" means a spouse, former spouse, a grandparent, a grandchild, a parent, a child, a stepchild or any other person living in the same household.]**

**(3)[(c)] "Notary technology" means an electronic device or process that allows a notary public to perform notarial acts with regard to electronic documents with or without the use of communication technology.**

**(4)"Online notary public" means a notary public who has registered to perform electronic notarizations. ["Online notarial act" means an electronic notarization performed for a remotely located individual facilitated by communication technology.**

**(d) "Notary technology" means an electronic device or process that allows a notary public to perform notarial acts with regard to electronic documents with or without the use of communication technology.]**

**(5)[(e)] "Tangible record" means information contained in or on a medium, whether an original or duplicate, that can be perceived without the requirement of electricity.**

~~(c)[(iii)]~~ A fraudulent, dishonest, or deceitful misstatement or omission of fact in the submitted application;

~~(d)[(iv)]~~ A finding against, or admission of liability by, the applicant in any legal proceeding or disciplinary action based on the applicant's fraud, dishonesty, or deceit;

~~(e)[(v)]~~ The denial, refusal to renew, revocation, or suspension of an applicant's notary commission or registration in another state; or

~~(f)[(vi)]~~ Failure of the applicant to maintain an assurance.

~~(4)[(3)]~~ If the application or registration is disapproved, the Secretary of State shall ~~[will]~~ state the reasons for the disapproval.

~~(5)[(e)]~~ Voluntary Termination of Notary Commission. A notary public may terminate his or her ~~[a notary]~~ commission by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Submission of a notification of termination of a notary commission shall automatically terminate ~~[terminates]~~ any notary registration.

~~(6)[(d)]~~ Change of Information. A notary public shall ~~[must]~~ notify the Office of the Secretary of State, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602, on a form promulgated by the Office of the Secretary of State for that purpose or on any electronic portal created by the Office of the Secretary of State for that purpose, during the period of the notary's commission and within ten (10) days of the change in any of the following information ~~[of any change of the following information during the period of the notary's commission, within ten days of the change, on a form promulgated by the Office of the Secretary of State for that purpose or on any electronic portal created by the Office of the Secretary of State for that purpose]~~:

~~(a)[(i) A change in]~~ The notary's mailing, physical or electronic mail address ~~[of the notary public]~~;

~~(b)[(ii) A change in]~~ The notary's county of residence ~~[of the notary public]~~;

~~(c)[(iii) A change in]~~ The notary's legal name ~~[of the notary public]~~;

~~(d)[(iv) A change in]~~ The notary's ~~[notary public's]~~ signature;

~~(e)[(v) A change in]~~ The notary's ~~[notary public's]~~ electronic signature, if any; or ~~[and]~~

~~(f)[(vi) A change in]~~ The notary technology used by the notary public.

Section 3. Registration to Perform Notarial Acts with Respect to Electronic Records and Electronic Notarizations; ~~Electronic and Online notarization~~. ~~(1)[(a)]~~ Authority to perform electronic and online notarial acts. ~~[(1) Electronic notarial acts.] A notary public [An individual] shall register [is authorized]~~ to perform notarial acts with respect to electronic records by: ~~[(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010 and KAR 8:005 Section 2;~~

~~(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform electronic notarial acts; and~~

~~(iii) Receiving written authorization to perform electronic notarial acts from the Secretary of State under Section 3 of this administrative regulation.~~

~~(2) Online notarial acts. An individual is authorized to perform online notarial acts by:~~

~~(n)[(xiv)]~~ A copy of the registrant's ~~[The county, book and page where the notary's]~~ surety bond ~~in the amount of \$1,000[is recorded]; and~~

~~(o)[(xv)]~~ A disclosure of any convictions, professional license or commission revocations, professional disciplinary actions, or other disqualifying actions or proceedings taken under the laws of any state against the **registrant [notary-public]**.

(2) Submission of registration form. The registration **form shall [must]** be submitted electronically to **the** Secretary of State as provided by information posted on the Secretary of State's Web site at <https://sos.ky.gov/>.

(3) Use of additional vendors. If, during the term of **his or her [a notary public's]** commission, **a [the]** notary public intends to use the technologies of **a [another]** vendor or person **other** than those identified in **subsection [Section]** (1)(i) of this Section, then an additional notification identifying **the [such]** other vendors or **[other]** persons **shall [must]** be submitted to the Secretary of State as provided in this Section and in accordance with the manner established by the Secretary of State as posted on the Secretary of State's Web site at <https://sos.ky.gov/>.

~~(4)(a)[(e)]~~ Approval or disapproval by the Secretary of State. ~~[(1)]~~ Approval of registration. If ~~[the provider of the technology identified by the notary public in the registration required under Section 2 of this administrative regulation has registered with the Secretary of State, and]~~ the registrant has complied with the provisions of KRS Chapter 423 and this **administrative regulation [chapter]**, the registration to perform notarial acts with respect to electronic records shall be approved **within thirty (30) days of its submission**. A registration **shall be [is]** effective as of the date of entry of that registration in the database of the Secretary of State.

~~(b)[(2)]~~ Disapproval of registration. The Secretary of State may disapprove **and reject a [the]** registration **[and reject the notary public's registration]** for the following reasons:

1.~~[(i)]~~ The **registrant's [notary public's]** failure to comply with KRS Chapter 423 or the provisions of this **administrative regulation [chapter]** or a pending inquiry regarding the **registrant's [notary public's]** failure to comply with KRS Chapter 423 **or [and]** this **administrative regulation [chapter]**;

2.~~[(ii)]~~ Any information required under **this** Section **[2 of this administrative regulation]** is missing, inaccurate, or incomplete;

3.~~[(iii)]~~ A fraudulent, dishonest, or deceitful misstatement or omission in the submitted registration;

4.~~[(iv)]~~ A finding against, or admission of liability by, the registrant in any legal proceeding or disciplinary action based on the registrant's fraud, dishonesty, or deceit;

5.~~[(v)]~~ Denial, refusal to renew, revocation, or suspension of a notary commission or registration in another state; **or**

6.~~[(vi)]~~ Failure of the **registrant [notary]** to maintain **a surety bond in the amount of \$1,000[an assurance; or**

~~(vii)]~~ **The provider of the technology identified by the notary public has not registered with the Secretary of State]**.

~~(5)[(3)]~~ If the **[notary public's]** registration is disapproved, the Secretary of State **shall [will]** state the reasons for the disapproval.

~~(6)[(d)]~~ Termination of electronic registration. A notary public may terminate an electronic registration by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602



to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing notarial acts with respect to electronic records, the certificate of the notarial act on the electronic record **shall** **[must]**:

(a) ~~[(i)]~~ Contain the name of the notary public as it appears on **his or her** ~~**[the notary public's]**~~ commission;

(b) ~~[(ii)]~~ Indicate the title "Notary Public" for any notarial act with respect to electronic records; and

(c) ~~[(iii)]~~ Indicate the **notary's** ~~**[notary public's]**~~ commission number and ~~**[the]**~~ commission expiration date.

(4) ~~[(e)]~~ Use of electronic signature and stamping device. A notary public **shall** ~~**[is]**~~ **be** responsible for the security of **his or her** ~~**[the notary public's]**~~ stamping device and **shall** ~~**[may]**~~ not allow another individual to use the device to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the notary signature and stamping device and shall not disclose any access information used to affix **his or her** ~~**[the notary public's]**~~ electronic signature or official stamp to electronic records, except:

(a) ~~[(1)]~~ When requested by the Secretary of State or a law enforcement officer;

(b) ~~[(2)]~~ When required by court order or subpoena; or

(c) ~~[(3)]~~ Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in **[30-KAR 8:005,] Section 5(6)(a) of this administrative regulation** ~~**[(g)]**~~.

(5) (a) ~~[(d)]~~ Protection against theft, alteration, or misuse. ~~[(1)]~~ A notary public **shall** ~~**[may]**~~ not allow any other individual to alter or use his or her electronic signature, notary technology, official stamp, or stamping device to perform a notarial act.

(b) ~~[(2)]~~ Upon resignation, revocation, or expiration of the notary's commission, **his or her** ~~**[the notary public's]**~~ notary technology and electronic stamping device (including any coding, disk, digital certificate, card, software, or password that enables the notary public to attach or logically associate the notary's electronic signature or official stamp to an electronic record) **shall** ~~**[must]**~~ be destroyed or disabled to prohibit its use by any other person. A former notary public whose commission terminated for a reason other than revocation or denial of renewal is not required to destroy **his or her** ~~**[the notary public's]**~~ notary technology or electronic stamping device if the former notary public is recommissioned as a notary public within thirty **(30)** days after the termination of **his or her** ~~**[the notary public's]**~~ former commission.

(c) ~~[(3)]~~ A notary public shall promptly notify the Secretary of State on actual knowledge of the theft or vandalism of the **notary's** ~~**[notary public's]**~~ notary technology or electronic stamping device. A notary public shall promptly notify the Secretary of State on actual knowledge of the unauthorized use by another person of the **notary's** ~~**[notary public's]**~~ electronic signature, notary technology, or electronic stamping device.

(6) ~~[(e)]~~ Tangible copies of an electronic record. A notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record if the notary has taken reasonable steps to confirm the accuracy of that certification.

Section 5. Standards for **Electronic Notarizations** ~~**[online notarial acts]**~~. (1) ~~[(a)]~~ Notarial acts with respect to electronic records. In performing **electronic notarizations** ~~**[online notarial acts]**~~

the identity credential and the individual. The analysis of the government-issued identification card ~~[identity credential]~~ and the dynamic knowledge-based authentication assessment shall conform to the following requirements:

~~(a) [(1)]~~ Credential analysis. The analysis of a government-issued identification card ~~[an identity credential]~~ shall [must] use public or private data sources to confirm the validity of the identity ~~[credential]~~ that is the subject of remote presentation by a remotely located individual and, at a minimum, ~~shall [at a minimum]~~:

1. ~~[(i)]~~ Use automated software processes to aid the online notary public in verifying the identity of each remotely located individual;

2. ~~[(ii)]~~ Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;

3. ~~[(iii)]~~ Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and

4. ~~[(iv)]~~ Enable the online notary public to visually compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the online notary public in real time through communication technology.

~~(b) [(2)]~~ Dynamic knowledge-based authentication. A dynamic knowledge-based authentication assessment shall be [is] successful if it meets the following requirements:

1. ~~[(i)]~~ The remotely located individual shall [must] answer a minimum of five ~~(5)~~ questions related to the individual's personal history or identity formulated from public or private data sources;

2. ~~[(ii)]~~ Each question shall [must] have a minimum of five ~~(5)~~ possible answer choices;

3. ~~[(iii)]~~ At least eighty (80) percent [80%] of the questions shall [must] be answered correctly;

4. ~~[(iv)]~~ All questions shall [must] be answered within two ~~(2)~~ minutes;

5. ~~[(v)]~~ If the remotely located individual fails the first attempt, the individual may attempt the authentication assessment one ~~(1)~~ additional time within twenty-four (24) hours;

6. ~~[(vi)]~~ During the second authentication assessment, a minimum of forty (40) percent of the prior questions shall [must] be replaced;

7. ~~[(vii)]~~ If the remotely located individual fails the second authentication assessment, the individual shall [is] not be allowed to attempt identity authentication with the same online notary public within twenty-four (24) hours of the second failed authentication assessment; and

8. ~~[(viii)]~~ The online notary public shall [must] not be able to see or record the questions or answers.

~~[(e) Other methods of identity verification. An online notary public has satisfactory evidence of the identity of a remotely located individual if the online notary public has personal knowledge of the identity of the individual, or if the individual is identified by oath or affirmation of a credible witness, or if the online notary has reasonably verified the identity of the individual by use of a valid public key certificate, with the following requirements:~~

**(6)(a)(g)** Notary technology provider registration. **(1)** A provider of technology used in the process of electronic or online notarization **shall [must]** register with Secretary of State in the manner directed by the Secretary of State and provide the following information:

- 1.(i)** The legal name of the technology provider;
- 2.(ii)** The mailing address of the technology provider;
- 3.(iii)** The physical address of the technology provider;
- 4.(iv)** A designated contact person for that provider;
- 5.(v)** The phone number, physical address, and email address of the contact person;
- 6.(vi)** The name of the technology provided;
- 7.(vii)** The name of the provider or providers of the knowledge-based authentication, credential analysis, or digital certificate services, if different from the technology provider;
- 8.(viii)** A description of the technology used and the manner in which it complies with KRS Chapter 423 and this **administrative regulation [chapter]**;

**9.(ix)** The process by which the technology provider verifies the identity of the notary public or digital certificate holder using the technology;

**10.(x)** A plan for the retention and disposition of records created, generated, or retained in conjunction with the use of the technology, including **[but not limited to,]** any electronic journal, recordings, or records created or retained during an electronic or online notarization, in the event the technology provider no longer engages in the business of providing electronic or online notary technology; and

**11.(xi)** An authorized certification that the technology provided complies with KRS Chapter 423 and this **administrative regulation [chapter]**.

**(b)(2)** A registration in compliance with this **subsection [section]** is non-transferable and **shall [may]** not be conveyed to any other notary technology provider.

**(7)(a)(h)** Complaint Against a Notary Technology Provider. **(1)** A written complaint may be made against a notary technology provider registered with the Office of the Secretary of State. A complaint that does not comply with the requirements of this **subsection [section]** **shall [will]** not be filed, responded to, or acted upon by the Secretary of State.

**(b)(2)** The Office of the Secretary of State may commence an investigation of a registered notary technology provider as a result of a complaint or upon its own initiative.

**(c)(3)** An investigation under this **subsection [section]** may include:

- 1.(i)** An initial request for information from the accused provider;
- 2.(ii)** A copy of the complaint forwarded to the registration provider; and
- 3.(iii)** A request for supporting documentation and other sources of information.

**(d)(4)** A provider shall provide true, accurate, and complete copies of all information requested by the Office of the Secretary of State.

**(e)(5)** Failure of a provider to comply with an investigation directive may result in revocation of the provider's registration.

**(f)(6)** A finding that the provider has failed to comply with the provisions of KRS Chapter 423 or this **administrative regulation [chapter]** may result in revocation of the provider's registration.

**(8)(i)** Duties of Notary Technology Provider. A notary technology provider **shall [must]**:

representative or guardian or any other person knowingly in possession of a journal or audio-visual recording **shall** ~~[must]~~:

**(a)[(i)]** Comply with the retention requirements of this subsection;

**(b)[(ii)]** Transmit the journal and recording to one **(1)** or more repositories under **this** Section ~~[2 of this administrative regulation]~~; or

**(c)[(iii)]** Transmit the journal and recording in an industry-standard readable data storage device to **his or her** ~~[his/her]~~ notary technology provider.

**(8)[(b)]** Repositories. A notary public **who** ~~[that]~~ is registered to perform notarial acts with respect to electronic records or **electronic notarizations** ~~[notarial acts involving remotely located individuals]~~, a guardian, conservator, or agent of **the** ~~[such a]~~ notary public, or a personal representative of **[such]** a deceased online notary public may, by written contract, engage a third person to act as a repository to provide the storage required by **this** Section ~~[1 of this administrative regulation]~~. A third person under contract under this Section shall be deemed a repository or custodian under KRS 423.380(8) or KRS 423.455(5), as applicable. The contract shall:

**(a)[(1)]** Enable the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public to comply with the retention requirements of **this** Section ~~[1 of this administrative regulation]~~ even if the contract is terminated; or

**(b)[(2)]** Provide that the information **shall** ~~[will]~~ be transferred to the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public if the contract is terminated.

**(9)(a)[(e)]** Lost, Stolen, or Improperly Accessed Journal. **[(1)]** A notary public **shall** ~~[is]~~ **be** responsible for the security of **his or her** ~~[the notary public's]~~ journal and **shall** ~~[may]~~ not allow another individual to use the journal to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the journal and shall not allow access to **his or her** ~~[the notary public's]~~ journal, except:

**1. [(i)]** When requested by the Secretary of State or a law enforcement officer;

**2. [(ii)]** When required by court order or subpoena; or

**3. [(iii)]** Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in **accordance with** ~~[30 KAR 8:005,]~~ Section 5 **of this administrative regulation**.

**(b)[(2)]** A notary public shall promptly notify the Secretary of State of a lost or stolen journal upon discovering the journal is lost or stolen.

**(10)[(d)]** Disposition of Notarial Records upon Termination of Commission or Registration. Upon the revocation, resignation, termination, or suspension of the commission of **a** ~~[the]~~ notary public or the revocation, resignation, termination, or suspension of the registration of **a** ~~[the]~~ notary public to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, the notary public shall retain the journal in accordance with the provisions of **this** Section ~~[1 of this administrative regulation]~~.

Section 7. **Prior Notice to the Secretary of State and Standards for the Use of Communication Technology in the Performance of Notarial Acts with Respect to Tangible Records.** **(1) A notary public shall, prior to the initial use of communication technology in the performance of notarial acts with respect to tangible records, notify the Office of the**

Section 8. Notary Discipline. (1) Failure to comply with the provisions of KRS 423.395 or this administrative regulation may result in the denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission but shall not invalidate a notarial act performed by a notary public.

(2) Denial, refusal to renew, revocation, suspension, or conditioning of a notary commission shall result upon notification to the Secretary of State of:

(a) A conviction of a felony or a crime involving fraud, dishonesty, or deceit;

(b) A finding against, or admission of liability by, the notary public in any legal proceeding or disciplinary action alleging fraud, dishonesty, or deceit by the notary; or

(c) Judicial determination of liability in a suit for fraud, misrepresentation, or failure to discharge the duties of a notary public.

(3) A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding, admission of liability, or judicial determination of liability as established in this Section.

(4) A person who knows of a violation [ef] may file a complaint against a notary public with the Secretary of State.

(5) A complaint shall be in writing, dated, and signed by the person making the complaint. A complaint that does not comply with the requirements of this subsection shall not be filed, responded to, or acted upon by the Secretary of State.

(6) Any condition, restriction, suspension, or revocation of a notary commission shall have the same effect on the electronic or online registration the notary public holds.

(7) The Secretary of State shall cause a review of any complaint filed against a notary public to determine whether the allegations in the complaint would establish a violation by a notary public, and any appropriate disciplinary action, which shall be informed by the following factors:

(a) Nature and severity of the act, violation, or crime committed;

(b) Number and variety of current violations;

(c) Evidence pertaining to the requisite honesty, credibility, truthfulness, and integrity of the notary public;

(d) Actual or potential harm to the general public, group, individual or customer;

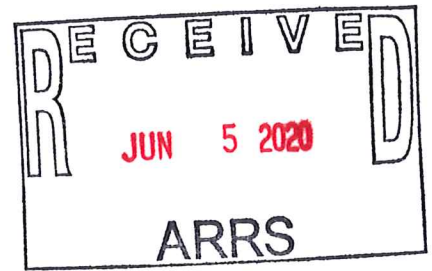
(e) History of complaints; and

(f) Prior disciplinary record or warning;

(8) The Secretary of State shall inform the notary public of any disciplinary action by mailing a notice of disciplinary action to the home address of the notary public on file. The notice shall inform the notary public of the basis for the disciplinary action and the right to a hearing. Administrative proceedings under this Section shall be governed by the provisions of KRS Chapter 13B.

(9) The Secretary of State shall certify any disciplinary action to the clerk of the county in which the notary public received his or her commission.

CONTACT PERSON: Michael Wilson, Director of Business and Deputy General Counsel, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687; email [sos.secretary@ky.gov](mailto:sos.secretary@ky.gov).



**Andy Beshear**  
Governor

## KENTUCKY BOARD OF PHARMACY

125 Holmes Street, Suite 300  
State Office Building Annex  
Frankfort KY 40601  
Phone (502) 564-7910  
Fax (502) 696-3806  
[pharmacy.ky.gov](http://pharmacy.ky.gov)

### Board Members

Peter P. Cohron, R.Ph.  
Jody Forgy, Consumer  
John Fuller, R.Ph.  
Craig Martin, Pharm D.  
Ron Poole, R.Ph.  
Jill Rhodes, Pharm.D.

### Executive Director

Larry A. Hadley, R.Ph.

June 2, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Compiler  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort, Kentucky 40601

**RE: 201 KAR 2:175. Emergency/seventy-two (72) hour prescription refills**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:175, the Kentucky Board of Pharmacy proposes the attached amendment to 201 KAR 2:175.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry A. Hadley".

Larry A. Hadley, R.Ph.  
Executive Director  
Kentucky Board of Pharmacy

5/27/2020

**SUGGESTED SUBSTITUTE**

**BOARDS AND COMMISSIONS**

**Board of Pharmacy  
(Amendment)**

**201 KAR 2:175. Emergency *prescription refills of up to a*[/]*seventy-two (72) hour supply or greater than a seventy-two (72) hour supply*[*prescription refills*].**

RELATES TO: KRS Chapters 217, 315

STATUTORY AUTHORITY: KRS 217.215(3), 315.191

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 217.215(3) requires the Board of Pharmacy to promulgate administrative regulations to carry out the provisions for emergency refills by a pharmacist in emergency situations when authorization may not be readily or easily obtained from the prescribing practitioner. KRS 315.191 authorizes the board to promulgate administrative regulations necessary to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists.** This administrative regulation ~~establishes~~*[sets-out]* the conditions ~~for when~~*[whereby]* a prescription may be refilled in an emergency situation and the prescriber is unavailable.

Section 1. If a pharmacist receives a request for a prescription refill with no refill authorized and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may:

**(1)** Dispense a one (1) time emergency refill of up to a seventy-two (72) hour supply of the **maintenance** medication when:

**(a)**~~[(1)]~~ The prescription refill is not for a controlled substance;

**(b)**~~[(2)]~~ The medication is essential to the maintenance of life or to the continuation of therapy in chronic conditions;

**(c)**~~[(3)]~~ In the pharmacist's professional judgment, the interruption of therapy ~~may~~*[might]* reasonably produce undesirable health consequences or may be detrimental to the patient's welfare and cause physical or mental discomfort;

**(d)**~~[(4)]~~ The pharmacist notes on the prescription record the date, the quantity dispensed, and ~~the pharmacist's~~*[his]* name or initials; and

**(e)**~~[(5)]~~ In all situations an emergency refill ~~shall~~*[must]* be followed by authorization from the prescriber for continued therapy.

**(2)**~~[(6) A pharmacist may]~~ Dispense greater than a seventy-two (72) hour supply of maintenance medication if **in addition to the requirements in subsection (1) of this section:**

**(a)** The standard unit of dispensing for the drug exceeds a seventy-two (72) hour supply;

**(b)** The pharmacist dispenses a supply of the drug that is equal to the standard unit of dispensing for the drug; and

**(c)** The drug is used for insulin therapy or the treatment of chronic respiratory diseases.



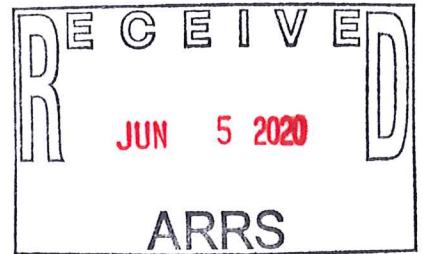
FINAL VERSION

Section 2. Violation of any provision of this administrative regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.

LARRY HADLEY, Executive Director

APPROVED BY AGENCY: March 4, 2020

FILED WITH LRC: March 4, 2020 at 3 p.m.



**Andy Beshear**  
Governor

## KENTUCKY BOARD OF PHARMACY

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### Board Members

Peter P. Cohron, R.Ph.  
Jody Forgey, Consumer  
John Fuller, R.Ph.  
Craig Martin, Pharm D.  
Ron Poole, R.Ph.  
Jill Rhodes, Pharm.D.

### Executive Director

Larry A. Hadley, R.Ph.

June 2, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Compiler  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort, Kentucky 40601

**RE: 201 KAR 2:230. Special limited pharmacy permit – Central Fill**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:230, the Kentucky Board of Pharmacy proposes the attached amendment to 201 KAR 2:230.

Sincerely,

Larry A. Hadley, R.Ph.  
Executive Director  
Kentucky Board of Pharmacy

**Suggested Amendment  
GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy**

**201 KAR 2:230. Special limited pharmacy permit – Central Fill.**

**Page 1**

**STATUTORY AUTHORITY**

**Line 6**

After "315.035," insert "315.0351."

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 7**

After "CONFORMITY:", insert the following:

KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists and pharmacies.

**Line 9**

After "315.035 and", delete "KRS".

**Line 11**

After "package, label", insert a comma.

**Page 1**

**Section 1**

**Line 14**

After "packaging, labeling", insert a comma.

**Page 2**

**Section 3(2)**

**Line 24**

After "prepared, packaged", insert a comma.

**Page 3**

**Section 3(4)**

**Line 5**

After "requirements of", insert "201 KAR 2:210".

Delete "201 KAR 2:230".



## BOARD OF DENTISTRY

Andy Beshear  
Governor

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Jeff Allen  
Executive Director

May 29, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Compiler  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: 201 KAR 8:550. Anesthesia and sedation related to dentistry

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 8:550, the Board of Dentistry proposes the attached amendment to 201 KAR 8:550.

Sincerely,

A handwritten signature in black ink, appearing to be "JA", written over a horizontal line.

Jeff Allen, Executive Director  
Kentucky Board of Dentistry  
312 Whittington Pkwy, Ste 101  
Louisville, KY 40222

**SUGGESTED SUBSTITUTE**

**4/15/2020 3:51 PM**

**GENERAL GOVERNMENT CABINET**

**Kentucky Board of Dentistry**

**201 KAR 8:550. Anesthesia and sedation related to dentistry.**

RELATES TO: KRS 313.035

STATUTORY AUTHORITY: KRS 313.035(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 313.035(1) requires the board to promulgate administrative regulations related to~~[-conscious]~~ anesthesia and sedation permits. **The administration of local anesthesia, sedation, and general anesthesia is an integral part of dentistry and the foundation of pain control.** This administrative regulation establishes requirements for permits to perform~~[-conscious]~~ sedation or anesthesia **associated with dentistry.**

Section 1. Definitions. (1) "Analgesia" means the diminution or elimination of pain.

(2) "ADA" means American Dental Association.

(3) "ASA" means American Society of Anesthesiologists.

(4) ~~["Competency" means displaying special skill or knowledge derived from training and experience.~~

~~(5)~~ (5) "Continual" means repeated regularly and frequently in steady succession.

~~(5)(6)~~ (6) "Continuous" means prolonged without any interruption. [

~~(1) "Advanced Cardiac Life Support" or "ACLS" means a certification that an individual has successfully completed an advanced cardiac life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:532.~~

~~(2) "Anesthesia" means an artificially induced insensibility to pain usually achieved by the administration of gases or drugs.~~

~~(3) "Anesthesia and sedation" means:~~

~~(a) Minimal sedation;~~

~~(b) Moderate sedation;~~

~~(c) Deep sedation; and~~

~~(d) General anesthesia.~~

~~(4) "Board" means the Kentucky Board of Dentistry.~~

~~(5) "Certified registered nurse anesthetist" means a registered nurse who is currently certified to practice nurse anesthesia in Kentucky.~~

~~(6) "Conscious sedation permit" means a permit that was issued by the board prior to February 1, 2011, that authorized the dentist to whom the permit was issued to administer parenteral sedation for the practice of dentistry.]~~

~~(6[7]) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function **could[may]** be impaired. The patient **might[may]** require assistance in maintaining a patent airway, and spontaneous ventilation **could[may]** be inadequate. Cardiovascular function is usually maintained.~~

~~(7[8]) "Enteral" means a technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (oral, rectal, or sublingual).~~

~~(8[9]) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation **could[may]** be required because of depressed spontaneous ventilation or drug-[-]induced depression of neuromuscular function. Cardiovascular function **might[may]** be impaired.~~

~~(9[10]) "Immediately available" means onsite at the facility and available for immediate use. [~~

~~(11) "Independently practicing qualified anesthesia provider" means **an individual with a valid Kentucky license or permit to provide sedation.**]~~

~~(10[12]) "Local anesthesia" means the elimination or diminution of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug.~~

~~(11[13]) "Maximum Recommended Dose" or "MRD" means the maximum FDA-recommended dose of a drug for minimal sedation, as printed in FDA-approved labeling for unmonitored home use.~~

~~(12[14]) "Minimal sedation" means a minimally depressed level of consciousness produced by a pharmacological method **that[which]** retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination **might[may]** be modestly impaired, ventilatory and cardiovascular functions are unaffected. [~~

~~(9) "Facility" means a location in which anesthesia or sedation is administered for the practice of dentistry.~~

~~(10) "Facility inspection" means an on-site inspection by the board or its designee to determine if a facility where the applicant proposes to provide anesthesia and sedation is adequately supplied, equipped, staffed, and maintained in a condition to support the provision of anesthesia and sedation services in a manner that meets the requirements of this administrative regulation.~~

~~(11) "General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation, drug-induced depression, or changes in neuromuscular function. Cardiovascular function may be impaired.~~

~~(12) "General anesthesia permit" means a permit that was issued by the board prior to February 1, 2011, that authorized the dentist to whom the permit was issued to administer general anesthesia for the practice of dentistry.~~

~~(13) "Incident" means dental treatment performed on a patient under minimal sedation, moderate sedation, deep sedation, or general anesthesia with unforeseen complications.~~

~~(14) "Incremental dosing" means administration of multiple doses of a drug until a desired effect is reached.~~

~~(15) "Minimal sedation" means a drug-induced state, with or without nitrous oxide to decrease anxiety, in which patients respond normally to tactile stimulation and verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are maintained and do not require assistance.~~

~~(16) "Moderate enteral sedation" means a drug-induced depression of consciousness through the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.~~

~~(17) "Moderate parenteral sedation" means a drug-induced depression of consciousness that bypasses the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.]~~

~~(13[15])[(18)]~~ "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. **This term includes the enteral administration of drugs exceeding the maximum recommended dose during a single appointment.**

~~(14[16])[(19)]~~ "Nitrous oxide sedation" or "N2O sedation" means a technique of inhalation sedation with nitrous oxide and oxygen.

~~(15[17])~~ "Operating dentist" means a **licensed dentist with primary responsibility for providing dental care during a procedure**~~[while a separate qualified dentist or independently practicing qualified anesthesia provider administers minimal, moderate, or deep sedation, or general anesthesia]~~.



~~(18)~~~~[(20)]~~ **"Parenteral"** means a technique of administration in which the drug bypasses the gastrointestinal (GI) tract, that is, through an intramuscular, intravenous, intranasal, submucosal, subcutaneous, intraosseous administration.]

~~(16)~~~~[19]~~ "Pediatric patient" means a patient twelve (12) years of age or younger.

~~(17)~~ **"Qualified anesthesia provider"** means a licensed anesthesiologist, Certified Registered Nurse Anesthetist, or dentist with an applicable sedation permit.

~~(18)~~~~[20]~~ "Qualified dentist" means a **licensed** dentist with an applicable sedation permit. A qualified dentist can also be an operating dentist if they fulfill the requirement of subsection (15) of this section ~~[the appropriate training and permits to provide sedation and anesthesia in compliance with state rules and regulations].~~

~~(19)~~~~[21]~~ "Time-oriented anesthesia record" means documentation at appropriate time intervals of drugs administered, doses of drugs administered, and physiologic patient data obtained during patient monitoring. [

~~(21)~~ "Pediatric Advanced Life Support" or "PALS" means a certification that an individual has successfully completed a pediatric advanced life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:532.

~~(22)~~ "Sedation" means the reduction of stress or excitement by the administration of a drug that has a soothing, calming, or tranquilizing effect.]

~~(20)~~ **"Trained individual"** means personnel with an active certification in Basic Life Support for Healthcare Providers, *who[and]* has been trained in monitoring EKG's, pulse oximetry, blood pressures, airway management, and capnography. Training, whether formal or internal, *is[shall be]* documented in employee records.

Section 2. Scope and Applicability. (1) The board shall be ~~[Statement of Policy: (1) The administration of local anesthesia, sedation, and general anesthesia is an integral part of dental practice. The board is]~~ committed to the safe and effective use of sedation and anesthesia by licensed, ~~[these modalities by appropriately]~~ educated, and trained dentists.

~~(2)~~ **Because large doses of local anesthetics, especially in combination with sedative agents, carry the risk of central nervous system depression, each licensed dentist shall** ~~[The use of local anesthetics is the foundation of pain control in dentistry; dentists must]~~ be aware of the maximum, safe dosage limits for each patient. ~~[Large doses of local anesthetics carry the risk of central nervous system depression, especially in combination with sedative agents.]~~

~~(3)~~ Level of sedation **shall be[is]** independent of the route of administration. Moderate or deep sedation, or general anesthesia, may be achieved via any route of administration.

~~(4)~~ Because sedation and general anesthesia are a continuum **and[;]** it is not always possible to predict how an individual patient will respond, **each licensed dentist** ~~[. Practition-~~

ers] intending to produce a given level of sedation shall be able to diagnose and manage the physiologic consequences for patients whose level of sedation becomes deeper than initially intended. For all levels of sedation, the qualified dentist shall have the training, skills, drugs, and equipment to identify and manage such an occurrence until either:

(a) Assistance arrives;[.] or

(b) The patient returns to the intended level of sedation without airway or cardiovascular complications.

(5) **Because new[New]** indications, agents, and techniques **[will]** lead to changes in anesthesia and sedation practices,[.] the board shall evaluate **[such]** changes for safety, efficacy, and to what extent **[such]** changes become accepted practice within the profession of dentistry.

Section 3.[Section 2.] Nitrous Oxide Sedation. (1) Nitrous oxide sedation may be used by a Kentucky-licensed dentist without a~~[-specific]~~ sedation permit or by a Kentucky-licensed dental hygienist **who is registered[permitted]** to deliver nitrous oxide analgesia under the direct supervision of a dentist **as per KRS 313.060(10)**~~[certified to administer block and infiltration anesthesia and nitrous oxide analgesia].~~

(2) Equipment used in the administration of nitrous oxide sedation shall have functional safeguard measures that:

(a) Limit the minimum oxygen concentration to thirty (30) percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) **Ensure[Insure]** that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

(4) **A Kentucky-registered dental assistant shall not independently administer nitrous oxide sedation, but may initiate nitrous oxide sedation if the dentist is in the office and gives the dental assistant specific instructions regarding the mode of administration and the titration, rate, and dosage of the anesthetic agent**~~[A dental assistant may only deliver nitrous oxide at a rate specified by direct orders of a dentist].~~

Section 4.[Section 3.] Minimal Sedation[Without a Permit]. (1) **A sedation permit shall not be**~~[No license or permit is]~~ required for a **Kentucky-licensed dentist to provide minimal sedation as defined by Section 1(12) of this**~~[Minimal Sedation as described in this administrative regulation].~~

(2) **A patient[Patients]** whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of minimal sedation.

(3) The enteral administration of drugs exceeding the maximum recommended dose during a single appointment is considered to be moderate sedation, and Section 5 of this administrative regulation shall apply.

(4) Nitrous oxide, ~~if~~**[when]** used in combination with a sedative agent, may **be considered to** produce minimal, moderate, or deep sedation, or general anesthesia.

(5) If more than one (1) drug is administered enterally to achieve the desired sedation effect, with or without the concomitant use of nitrous oxide, Section 5 of this administrative regulation shall apply.

(6) A dentist who administers minimal sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness. The use of the MRD to guide dosing for minimal sedation is intended to create this margin of safety.

(7) If minimal sedation is administered to a patient who is taking another substance known to increase the sedative **effects on**~~[properties of]~~ the patient, Section 5 of this administrative regulation shall apply.

(8) An operating dentist shall not be required to complete additional training to administer minimal sedation.

(9) The administration of minimal sedation by another ~~[qualified]~~ dentist **or [independently practicing]** qualified anesthesia provider shall require the operating dentist to maintain current certification in Basic Life Support for Healthcare Providers.

(10) Clinical ~~guidelines~~**[Guidelines]**.

(a) Patient **history and evaluation**~~[History and Evaluation]~~. Patients considered for minimal sedation shall be ~~[suitably]~~ evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history and medication use. In addition, patients with significant medical considerations (ASA III, IV) **~~shall~~*[should]*, unless otherwise documented by the provider, [may]** require **consideration of** a consultation with their treating physician prior to being administered minimal sedation.

(b) **Pre-operative evaluation and preparation**~~[Operative Evaluation and Preparation]~~.

1. The patient~~[-]~~ or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

2. Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of minimal sedation.

3. The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, **and** pulse rate~~[-, and respiration rate]~~ shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

4. Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

5. The patient~~[,]~~ or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure.

(c) Personnel and **equipment requirements**~~[Equipment Requirements]~~.

1. Personnel. **All clinical staff participating in the care of a minimally sedated patient shall be certified in**~~[at least one (1) additional person trained in]~~ Basic Life Support for Healthcare Providers **[shall be present throughout the administration of minimal sedation, in addition to the operating dentist]**.

2. Equipment.

a. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

b. All equipment shall be examined for proper performance prior to each administration of sedation.

c. If inhalation equipment is used, it shall have a fail-safe system **that shall be**~~[which is appropriately]~~ examined and calibrated and a functioning device **that shall prohibit**~~[which prohibits]~~ the delivery of less than thirty (30) percent oxygen, or **a**~~[an appropriately]~~ calibrated and functioning in-line oxygen analyzer with audible alarm.

d. **A**~~[An appropriate]~~ scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

3. Monitoring and **documentation**~~[Documentation]~~.

a. Monitoring. **The**~~[: A qualified]~~ dentist~~[,]~~ or **a**~~[an appropriately]~~ trained individual chosen by the ~~[operating]~~ dentist, shall remain in the **treatment room**~~[operating area]~~ during active dental treatment to monitor the patient continuously until the patient meets the criteria for discharge to the recovery area. ~~[The qualified dentist or other individual monitoring the treatment shall be familiar with monitoring techniques and equipment.]~~ The following shall be monitored **unless precluded or invalidated by the nature of the patient:**

(i)~~[a.]~~ Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;~~[,]~~

(ii)~~[b.]~~ Oxygenation. Oxygen saturation by pulse oximetry **shall be continually evaluated;**~~[may be clinically useful and shall be considered.]~~

(iii)~~[c.]~~ Ventilation. The patient's chest excursions shall be monitored~~[,]~~ and ~~[their]~~ respirations **shall be** verified; **and**~~[,]~~

(iv)~~[d.]~~ Circulation. Blood pressure and heart rate shall be evaluated pre-operatively **and post-operatively**~~[. Intraoperative monitoring of blood pressure may be clinically useful and shall be considered.]~~

b. Documentation. **A**~~[An appropriate]~~ sedative record shall be maintained for each patient to whom sedation is administered. **The sedative record**~~[which]~~ shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

4. Recovery and **discharge**~~[Discharge]~~.

a. Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

b. **The dentist or a**~~[A qualified dentist or an appropriately]~~ trained individual chosen by the ~~[operating]~~ dentist shall monitor the patient during recovery until the patient is ready for discharge~~[by the operating dentist]~~.

c. **The dentist shall examine the patient and document**~~[A qualified dentist shall determine and document whether]~~ the patient's level of consciousness, oxygenation, ventilation, and circulation ~~[are satisfactory]~~ prior to discharge.

d. The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(d) Emergency **management**~~[Management]~~.

1. If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist shall stop the dental procedure until the patient is returned to the intended level of sedation.

2. The operating dentist shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of minimal sedation and patient rescue.

Section 5. Moderate Sedation. (1) **A Moderate Sedation Permit issued by the board shall be required for a Kentucky-licensed dentist to administer**~~[The board shall issue a license or permit to a dentist prior to the administration of]~~ moderate sedation **as defined by Section 1(13) of this administrative regulation**~~[to a patient]~~.

(2) A dentist who administers moderate sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness.

(3) A qualified dentist shall be aware that repeated dosing of an agent before the effects of previous dosing can be fully appreciated **could**~~[may]~~ result in a greater alteration of the state of consciousness than intended. A dentist who administers moderate sedation shall refrain from administering an additional drug increment before the previous dose has taken full effect.

(4) A patient whose only response is reflex withdrawal from a painful stimulus shall not be considered to be in a state of moderate sedation.

**(5) To qualify for a Moderate Sedation Permit, a dentist shall:**

**(a) Submit an Application for Sedation or Anesthesia Permit;**

**(b) Pay the fee required by 201 KAR 8:520; and**

**(c) Provide documentation that the dentist meets the educational requirements of subsection (6) or (7) of this section.**

**(6)**~~[(5)]~~ Education requirements for ~~[adult]~~ moderate sedation.

(a) To administer moderate sedation to an adult patient, a dentist shall have **current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support, and complete**~~[one of the following]~~**[successfully completed]**:

1. A comprehensive training program in moderate sedation **that complies with the requirements established**~~[which satisfies the requirements described]~~ in the Moderate Sedation section of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students at the time training was commenced; or

2. An advanced education program accredited by the Commission on Dental Accreditation **that**~~[which]~~ provides comprehensive **[and appropriate]** training necessary to administer and manage moderate sedation commensurate with this administrative regulation.~~]; and~~

**3. Current certifications in Basic Life Support for Healthcare Providers, and Advanced Cardiac Life Support, and Pediatric Advanced Life Support.**

~~(b) Any person currently holding a permit to provide adult moderate sedation prior to the effective date of this administrative regulation who fails to meet the requirements of this subsection shall have until December 31, 2023 to comply with the requirements of this subsection. Any valid moderate sedation permits issued prior to this administrative regulation shall remain active until their expiration or renewal date, at which time the requirements of this subsection shall have to be met prior to renewal.~~

~~(6) Educational requirements for pediatric moderate sedation:~~

~~(a)~~

~~(b)[b.] To administer moderate sedation to a pediatric patient, a dentist shall have successfully completed:~~

1. An advanced education program accredited by the Commission on Dental Accreditation **that**~~[which]~~ provides comprehensive **[and appropriate]** training necessary to administer and manage moderate sedation commensurate with this administrative regulation; and

2. Current certifications in Basic Life Support for Healthcare Providers **and**~~], and Advanced Cardiac Life Support and, if administering sedation to pediatric patients,~~ Pediatric Advanced Life Support.

~~(c)[b]) The operating dentist or the facility at which the moderate sedation is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified **anesthesia provider**~~[dentist]~~ to provide moderate sedation.~~

~~(d) Any valid moderate sedation permits issued prior to this administrative regulation shall remain active until their expiration date and shall comply with the requirements of this section, except **that**~~[:1.]~~ moderate adult enteral and parenteral permit holders shall have until December 31, 2023 to comply with subsection (6)(a)1. and 2. of this section.~~

(7) Clinical guidelines; patient history and evaluation.

(a) ~~[Guidelines. Patient History and Evaluation]~~ Patients considered for moderate sedation shall be ~~[suitably]~~ evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, and ASA status.

(b) ~~Patients~~~~[In addition, patients]~~ with significant medical considerations (ASA III, IV) ~~shall~~~~[should]~~, unless otherwise documented by the provider, ~~[may]~~ require **consideration of** a consultation with their treating physician prior to being administered moderate sedation.

(8) ~~Pre-operative evaluation and preparation~~~~[Operative Evaluation and Preparation]~~.

(a) ~~[Pre-Operative Evaluation and Preparation. 1.]~~ The patient~~[,]~~ or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

(b) ~~[2.]~~ Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of moderate sedation.

(c) ~~[3.]~~ The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, **and** pulse rate~~[, and respiration rate]~~ shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d) ~~[4.]~~ Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

(e) ~~[5.]~~ The patient~~[,]~~ or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentist, adopted October 2016.

(9) Personnel and **equipment requirements**~~[Equipment Requirements]~~.

(a) Personnel. All clinical staff participating in the care of a moderately sedated patient shall be certified in Basic Life Support for Healthcare Providers. ~~[At least one (1) additional person certified in Advanced Cardiac Life Support shall be present throughout the administration of moderate sedation to an adult patient, in addition to the operating dentist. At least one (1) additional person certified in Pediatric Advanced Life Support shall be present throughout the administration of moderate sedation to a pediatric patient, in addition to the operating dentist.]~~

(b) Equipment.



1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system **that shall be**~~[which is appropriately]~~ examined and calibrated and a functioning device **that shall prohibit**~~[which prohibits]~~ the delivery of less than thirty (30) percent oxygen, or a~~[an appropriately]~~ calibrated and functioning in-line oxygen analyzer with audible alarm.

4. **A**~~[An appropriate]~~ scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravascular or intraosseous access and a defibrillator or automated external defibrillator shall be immediately available until the patient meets discharge criteria.

(10) Monitoring and **documentation**~~[Documentation]~~.

(a) Monitoring.

1. If leaving the room, a qualified dentist **shall**~~[must]~~ have at least one (1) month of general anesthesia training and shall select a trained individual to continuously monitor the patient; or

2.~~[Otherwise,]~~ A qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area~~[The operating dentist shall remain in the operating room to monitor the patient continuously until the patient has recovered to a minimally sedated level. When active treatment concludes and the patient recovers to a minimally sedated level, the dentist may choose an appropriately trained individual to remain with and continue to monitor the patient until the patient is discharged from the facility. The operating dentist shall not leave the facility until the patient is discharged from the facility].~~

(b) The following shall be monitored:

1. Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed; [.]

2. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated; [.]

3. Ventilation: The **qualified anesthesia provider** ~~[operating dentist]~~ shall be responsible for the observation of ventilation and breathing by monitoring end tidal CO<sub>2</sub> unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions; [.]

4. Circulation. The **qualified anesthesia provider**~~[operating dentist]~~ shall continually evaluate blood pressure and heart rate unless invalidated by the nature of the patient and noted in the time-oriented anesthesia record; **and**~~;~~

5. The patient's pulse oximetry, heart rate, end tidal CO<sub>2</sub>, ~~[respiratory rate,]~~ blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

**~~[6. The operating dentist shall consider the continuous ECG monitoring of a patient with significant cardiovascular disease.]~~**

(c) Documentation. **A**~~[An appropriate]~~ sedative record shall be maintained for each patient to whom sedation is administered. **The sedation record**~~[which]~~ shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(11) Recovery and **discharge**~~[Discharge]~~.

(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

**(b) When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.**

**(c) The qualified anesthesia provider or a**~~[The operating dentist or appropriately]~~ trained individual **chosen by the qualified anesthesia provider** shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

**(d) The qualified anesthesia provider** ~~[(c) A qualified dentist]~~ shall determine and document ~~[whether]~~ the patient's level of consciousness, oxygenation, ventilation, and circulation **[are satisfactory]** prior to discharge.

~~(e)~~**(d)** The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

**(f) Because re-sedation could occur after the effects of a reversal agent have waned,**~~[(e)]~~ If a pharmacological reversal agent is administered before the patient's discharge criteria have been met, the **patient's escort shall be notified of the risk of re-sedation**~~[patient shall be monitored for a longer period than usual before discharge, since re-sedation may occur once the effects of the reversal agent have waned]~~.

(12) Emergency **management**~~[Management]~~.

(a) If a patient enters a deeper level of sedation than the **qualified anesthesia provider** ~~[dentist]~~ is qualified to provide, the **procedure shall stop**~~[dentist shall stop the dental procedure]~~ until the patient is returned to the intended level of sedation.

(b) The ~~operating dentist~~ qualified anesthesia provider shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of moderate sedation and patient rescue.

Section 6. Deep Sedation and General Anesthesia. (1) **A Deep Sedation and General Anesthesia Permit issued by the board shall be required for a Kentucky-licensed dentist to administer "deep sedation" and "general anesthesia" as defined by Section 1(6) and (8) of this administrative regulation.**

(2) To qualify for a deep sedation and general anesthesia permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of subsection (3) of this section ~~[The board shall issue a license or permit to a dentist prior to the administration of moderate sedation to a patient].~~

(3) Education requirements.

(a) To administer deep sedation or general anesthesia, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation, which provides comprehensive ~~[and appropriate]~~ training necessary to administer and manage deep sedation or general anesthesia; and

2. Current certifications in ~~the following~~:

a. Basic Life Support for Healthcare Providers;

b. ~~[, and]~~ Advanced Cardiac Life Support if administering sedation to adult patients; and

c. Pediatric Life Support ~~[,]~~ if administering sedation to pediatric patients ~~[, Pediatric Advanced Life Support].~~

(b) The operating dentist or the facility at which deep sedation or general anesthesia is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified **anesthesia provider** ~~[dentist]~~ to provide **deep sedation or general anesthesia** ~~[moderate sedation, with at least one (1) additional person certified in Advanced Cardiac Life Support or an equivalent].~~

(4) **Clinical guidelines; for patient history and evaluation. Each patient** ~~[(3) Clinical Guidelines. Patient History and Evaluation. Patients]~~ considered for deep sedation or general anesthesia shall be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, nothing by mouth status, and ASA status. In addition, patients with significant medical considerations (ASA III, IV) **shall** ~~[should]~~, **unless otherwise documented by the provider,** ~~[may]~~ require **consideration of** a consultation with their

treating physician prior to being administered **deep sedation or general anesthesia**.~~[moderate sedation. Patients with elevated BMI could [may] be at increased risk for airway associated morbidity, particularly if in association with other factors, such as obstructive sleep apnea.]~~

**(5)[(4)] Pre-operative evaluation and preparation**~~[Operative Evaluation and Preparation].~~

(a) ~~[Pre-Operative Evaluation and Preparation. 1.]~~The patient[, or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

(b)~~[2.]~~ Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be **confirmed**~~[determined]~~ prior to the administration of **deep**~~[moderate]~~ sedation or general anesthesia.

(c)~~[3.]~~ The patient shall be physically examined prior to the administration of **deep**~~[minimal]~~ sedation or general anesthesia. Baseline vital signs including body weight, height, blood pressure, blood oxygen saturation, and pulse rate~~[, and respiration rate]~~ shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d)~~[4.]~~ The patient[, or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ASA Summary of Fasting and Pharmacologic Recommendations.

(e)~~[5.]~~ An intravenous line shall be established and secured throughout the procedure, except for patients with special needs as **per subsection (9)**~~[provided in subsection (8)]~~ of this section.

**(6)[5] Personnel and equipment requirements**~~[Equipment Requirements].~~

(a) Personnel. All clinical staff participating in the care of a deeply sedated patient or a patient who has been administered general anesthesia shall be certified in Basic Life Support for Healthcare Providers. ~~[At least one (1) additional person certified in Advanced Cardiac Life Support shall be present throughout the administration of moderate sedation to an adult patient, in addition to the operating dentist. At least one (1) additional person certified in Pediatric Advanced Life Support shall be present throughout the administration of moderate sedation to a pediatric patient, in addition to the operating dentist.]~~

(b) A minimum of three (3) individuals shall be present while a patient is being treated with deep sedation or general anesthesia. **If**~~[When]~~ a pediatric patient is being treated with deep sedation or general anesthesia, **in addition to the operating dentist,** a separate qualified anesthesia provider~~[, in addition to the operating dentist,]~~ shall

manage the patient's anesthesia unless the anesthesia is performed by an oral and maxillofacial surgeon.

(c) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system **that shall be**~~[which is appropriately]~~ examined and calibrated and a functioning device **that shall prohibit**~~it[which prohibits]~~ the delivery of less than thirty (30) percent oxygen, or ~~a~~**[an appropriately]** calibrated and functioning in-line oxygen analyzer with audible alarm.

4. ~~A~~**[An appropriate]** scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravenous access and to monitor end tidal CO<sub>2</sub> and auscultation of breath sounds shall be immediately available.

6. Resuscitation **medications, a**~~[mediations, an appropriate]~~ defibrillator, ~~[and]~~ equipment and drugs necessary to provide advanced airway management and advanced cardiac life support shall be immediately available.

**(7)[(6)] Monitoring and documentation[Documentation].**

(a) Monitoring.

**1. If leaving the room, a qualified dentist shall**~~[must]~~ **have at least one (1) month of general anesthesia training and shall select a trained individual to continuously monitor the patient; or**

**2.**~~[Otherwise,]~~ **A qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area**~~[A qualified dentist administering deep sedation or general anesthesia shall remain in the operating room to monitor the patient continuously until the patient meets the criteria for recovery. The qualified dentist shall not leave the facility until the patient is discharged from the facility.]~~

**(b)**~~]~~ The following shall be monitored:

1. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;~~]~~

2. Ventilation. For an intubated patient, end-tidal CO<sub>2</sub> shall be continually monitored and evaluated. For a non-intubated patient, end-tidal CO<sub>2</sub> shall be continually monitored and evaluated unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions;~~]~~

3. Circulation. The qualified **anesthesia provider**~~[dentist]~~ shall continually evaluate heart rate and rhythm by ECG throughout the procedure, as well as the patient's pulse rate by pulse oximetry;~~[-]~~

4. Temperature. A device capable of measuring body temperature shall be readily available during the administration of deep sedation or general anesthesia. Equipment necessary to continually monitor body temperature shall be available and used ~~if~~~~[whenever]~~ triggering agents associated with malignant hyperthermia are administered; ~~and~~~~[-]~~

~~5. The patient's respiration rate and blood pressure shall be continually monitored and evaluated.]~~

5~~[6]~~. The patient's pulse oximetry, heart rate, end tidal CO<sub>2</sub>, ~~[respiratory rate,]~~ blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

(b) Documentation. ~~A~~~~[An appropriate]~~ sedative record shall be maintained for each patient to whom sedation is administered. **The sedative record**~~[which]~~ shall include the names of all drugs administered, including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

~~(8~~~~[7])~~ Recovery and **discharge**~~[Discharge]~~.

(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

(b) **When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.**

(c) **The qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider**~~[The qualified dentist]~~ shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

~~(d)~~~~[(e)]~~ The qualified **anesthesia provider**~~[dentist]~~ shall determine and document ~~[whether]~~the patient's level of consciousness, oxygenation, ventilation, and circulation ~~[are satisfactory]~~ prior to discharge.

~~(e)~~~~[(d)]~~ The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

~~(9)~~~~[(8)]~~ Patients with **special needs**~~[Special Needs]~~.

(a) Because many dental patients undergoing deep sedation or general anesthesia are mentally or physically challenged, it is not always possible to administer a comprehensive physical examination or appropriate laboratory tests prior to sedation. In this circumstance, the dentist responsible for administering the deep sedation or general anesthesia shall document the reasons preventing the examination of the patient in the patient's medical record.

(b) Deep sedation or general anesthesia may be administered without first establishing an indwelling intravenous line if the establishment of intravenous access after deep sedation or general anesthesia is rendered necessary because of poor patient cooperation.

**(10) Emergency management. The qualified anesthesia provider [(9) Emergency Management. The operating dentist]** shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of patient rescue and deep sedation or general anesthesia. [

~~(1) A permit shall not be required for a dentist to administer minimal enteral sedation for patients age thirteen (13) and older.~~

~~(2) A dentist who intends to administer minimal sedation shall indicate the intent to administer minimal sedation in the patient's record.~~

~~(3) Medication used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Additional dosing shall be within the MRD limits.~~

~~(4) A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia.~~

~~(5) Nitrous oxide may be combined with an oral medication. If nitrous oxide is combined with an oral medication, the level of sedation shall be maintained at the level of minimal sedation.~~

~~Section 4. Permit and Location Certificate Required. (1) A dentist shall not administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry unless:~~

~~(a) The dentist holds an appropriate Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit issued by the board; or~~

~~(b) The dentist holds a conscious sedation or general anesthesia permit that shall be converted to a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit at the next license renewal.~~

~~(2) A dentist shall not administer an anesthetic technique under a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia permit issued by the board at a facility unless:~~

~~(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or~~

~~(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.~~



~~(3) A treating dentist who does not hold an anesthesia and sedation permit shall not allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry at a facility owned or operated by the treating dentist unless:~~

~~(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or~~

~~(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.~~

~~Section 5. Classifications of Anesthesia and Sedation Permits. The following permits shall be issued by the board to a qualified licensed dentist:~~

~~(1) Minimal Pediatric Sedation permit that authorizes a dentist to use minimal enteral sedation for patients age five (5) to twelve (12). Medication or medications used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Incremental dosing shall be prohibited. All dosing shall be administered in the dental office. A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia. Nitrous oxide may be combined with an oral medication. If nitrous oxide is combined with an oral medication, the level of sedation shall be maintained at the level of minimal sedation;~~

~~(2) Moderate Enteral Sedation permit that authorizes a dentist to use moderate enteral sedation for patients age thirteen (13) and older;~~

~~(3) Moderate Parenteral Sedation permit that authorizes a dentist to use moderate parenteral sedation for patients age thirteen (13) and older;~~

~~(4) Moderate Pediatric Sedation permit that authorizes a dentist to use moderate sedation by any route of administration for patients age twelve (12) and under; and~~

~~(5) Deep Sedation or General Anesthesia permit that authorizes a dentist to use:~~

~~(a) General anesthesia; or~~

~~(b) Deep sedation.~~

~~Section 6. Qualifications for Obtaining a Minimal Pediatric Sedation Permit. To qualify for a Minimal Pediatric Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of: (a) a Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage minimal sedation; or~~

~~(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction on pediatric minimal sedation by the enteral route or the combination enteral and nitrous oxide route.~~

~~Section 7. Qualifications for Obtaining a Moderate Enteral Sedation Permit. To qualify for a Moderate Enteral Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of: (a) A Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation; or~~

~~(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction plus management of at least ten (10) adult case experiences by the enteral route or the combination enteral and nitrous oxide route. These ten (10) cases shall include at least three (3) live (on sight) clinical dental experiences managed by participants in groups that shall not exceed five (5) individuals. These three (3) live (on-sight) experiences may be obtained by observing a permit level dentist in his or her office, and the remaining cases may include simulations and video presentations and shall include at least one (1) experience in returning a patient from deep to moderate sedation.~~

~~Section 8. Qualifications for Obtaining a Moderate Parenteral Sedation Permit. To qualify for a Moderate Parenteral Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of: (a) A CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate parenteral sedation; or~~

~~(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of sixty (60) hours of didactic instruction plus management of at~~

least twenty (20) patients per course participant in moderate parenteral sedation techniques.

~~Section 9. Qualifications for Obtaining a Moderate Pediatric Sedation Permit. To qualify for a Moderate Pediatric Sedation permit, an applicant shall:~~

- ~~(1) Submit an Application for Sedation or Anesthesia Permit;~~
- ~~(2) Pay the fee required by administrative regulation;~~
- ~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~
- ~~(4) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation for patients age twelve (12) and under.~~

~~Section 10. Qualifications for Obtaining a Deep Sedation or General Anesthesia Permit. To qualify for a Deep Sedation or General Anesthesia permit, an applicant shall:~~

- ~~(1) Submit an Application for Sedation or Anesthesia Permit;~~
- ~~(2) Pay the fee required by administrative regulation;~~
- ~~(3) Hold current certification in either ACLS or PALS; and (4) Provide proof of successful completion of:~~

~~(a) A board-approved Accreditation Council for Graduate Medical Education (ACGME) accredited post-doctoral training program in anesthesiology which affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia;~~

~~(b) A board-approved nurse anesthesia program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs that affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia;~~

~~(c) Successful completion of a minimum of two (2) years advanced clinical training in anesthesiology from a Joint Commission on Accreditation of Healthcare Organization (JCAHO) accredited institution that meets the objectives set forth in part two (2) of the American Dental Association's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry; or~~

~~(d) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage deep sedation and general anesthesia.]~~

Section 7.[11.] Multiple Application Levels. **A dentist [Permitted. Dentists]** with the required education and training to provide[~~for~~] more than one (1) level of sedation may mark **the**[~~their~~] levels of qualification on the Application for Sedation or Anesthesia

Permit~~], based on the requirements of Sections 6 through 10 of this administrative regulation].~~

**Section 8. Renewal of a Sedation or Anesthesia Permit. (1) A qualified dentist applying for renewal of an active permit to administer moderate sedation, or deep sedation or general anesthesia shall:**

**(a) Submit an Application for Renewal of Sedation or Anesthesia Permit;**

**(b) Pay the fee required by 201 KAR 8:520;**

**(c) Complete at least four (4) hours of clinical continuing education related to sedation or anesthesia in a classroom setting during the two (2) year term of the permit; and**

**(d) Maintain ACLS or PALS certification as required by Sections 5 and 6 of this administrative regulation.**

**(2) The continuing education requirements of this section shall be in addition to the license renewal requirements of 201 KAR 8:532.**

**(3) Unless properly renewed, each permit issued under this administrative regulation shall expire on December 31 of odd-number years.**

Section ~~9[8].~~[12.] Location Requirement. A dentist holding a ~~a~~[Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia] permit **in accordance with**~~[under]~~ this administrative regulation shall advise the board of the name and address of each facility where the dentist intends to or has ceased to administer anesthesia and sedation by submitting the **Sedation or Anesthesia** ~~[and Sedation]~~ Permit Location Notification Form within ten (10) business days of the change.

Section ~~10[9].~~[13. ~~Anesthesia and Sedation~~] Facility Certificates. (1) The owner or operator of a facility shall obtain **an Anesthesia or Sedation Facility Certificate**~~[a facility certificate]~~~~[an Anesthesia and Sedation Facility Certificate]~~ from the board for any location at which:

~~(a)]~~ a dentist holding a sedation or~~[Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or]~~ general anesthesia permit provides moderate sedation, deep sedation, or general anesthesia. A facility certificate shall not be~~[is not]~~ required for minimal sedation or nitrous oxide sedation alone.~~[may administer anesthesia and sedation under the permit; or~~

~~(b)]~~(2) A facility certificate shall be required if a dentist allows an independently practicing qualified anesthesia provider to administer sedation or general anesthesia in a dental office~~[The treating dentist may allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist~~

to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry].

(3)[(2)] A facility owner or operator desiring to obtain an Anesthesia **or[and]** Sedation Facility Certificate shall:

(a) Submit **an** Application for **Sedation or Anesthesia[a]** Facility Certificate[an Anesthesia and Sedation Facility Certificate]; **and**

(b) Pay the fee required by 201 KAR 8:520.[-; and

**(c) Attest that the facility meets the requirements of this administrative regulation]**[Successfully pass a facility inspection as outlined in Section 14 of this administration. (3) A dentist currently in an advanced training course for sedation may request the Board of Dentistry complete a Sedation Facility Inspection prior to completion of the course].

**(4)[3])[(4)]** The owner or operator of a facility shall not allow an individual to administer anesthesia or sedation unless the individual is permitted to do so **as established by[under]** this administrative regulation.

**(5)[4])[(5)]** The owner or operator of a facility shall maintain for **at least seven (7)[five (5)]** years, for inspection by the board, the name and license number of each dentist **or independently practicing qualified anesthesia provider[-, physician anesthesiologist, or certified registered nurse anesthetist]** who has administered anesthesia or **moderate** sedation at that location.

**(6)[5])** The owner or operator of a facility shall ensure that the facility remains **[properly]** equipped and staffed for the duration of time that moderate sedation, deep sedation, or general anesthesia is provided at the facility.[-(6) The owner or operator of a facility shall ensure that the facility:

(a) Remains properly equipped in accordance with Section 14 of this administrative regulation; and

(b) Remains properly staffed in accordance with Section 15 of this administrative regulation.[-]

**(7)[6])[(7)]** In addition to the requirements contained in subsection (6) of this section, The owner or operator of a facility shall ensure that the facility has **[appropriate]** nonexpired emergency and sedation medications.

Section **11[10]**. Renewal of Facility Certificate. (1) **All active[Active]** facility certificates **[-issued prior to the effective date of this administrative regulation]** shall expire on December 31 of **odd-numbered years[-the second year following the date of issuance]**.

(2) **Any valid[new]** facility certificates **issued prior to this administrative regulation shall remain active until their original expiration date, at which time the requirements of this regulation shall have to be met prior to renewal[on December 31, 2021 remain active for a period of two (2) years]**.

(3) To renew a facility certificate, the owner or operator shall:

(a) Submit ~~an~~**[a completed and signed]** Application for Renewal of **Sedation or Anesthesia Facility Certificate**; and

(b) Pay the fee required by 201 KAR 8:520~~[- and~~

~~(c) Attest that the facility [meets] the requirements of this administrative regulation].~~

Section ~~12~~**[11]**~~[14]~~. Facility~~[Inspection]~~ Criteria. (1) To qualify for **a facility certificate**~~[an Anesthesia and Sedation Facility Certificate]~~, the owner or operator of a facility shall attest **in the Application for Sedation or Anesthesia Facility Certificate** that the facility has~~[the following]~~~~[pass an evaluation of facility equipment, medications, and clinical records:~~

(a) The following shall be provided by the facility to qualify:

(a)~~[1-]~~ **An** oxygen and gas delivery system **with fail-safe backup**~~[- backup system fail-safe];~~~~[2- Gas storage facility];~~

(b)~~[3-]~~ **A** safety indexed gas system;

(c)~~[4-]~~ **A** suction and backup system;

(d)~~[5-]~~ **An** auxiliary lighting system;

(e) **An** operating~~[6- Suitability of operating]~~ room to include:

1. **At**~~[a- Size, which shall be at]~~ a minimum, ten (10) feet by eight (8) feet or eighty (80) square feet **in size**;

2.~~[b-]~~ **An** operating primary light source and secondary portable back-up source, unless **a** back-up generator is available; and

3.~~[c-]~~ Accessibility by emergency medical staff;

(f)~~[7-]~~ **A** recovery area, including oxygen, suction, and~~[-visual and]~~ electronic monitoring, which may **be a part of**~~[include]~~ the operating room;

(g)~~[8-]~~ Preoperative medical history and physical evaluation form; and

(h)~~[9-]~~ Anesthesia and monitoring equipment checked to **ensure**~~[insure proper]~~ working order **and calibration, if applicable**.

(2) The following shall be maintained in **[proper]** working order by the facility or by the qualified individual administering sedation or anesthesia at or on behalf of the facility:~~[(b) The following shall be provided by the facility or by an individual listed in Section 22 of this administrative regulation:]~~

(a)~~[1-]~~ **[Appropriate]** Drugs for each procedure, all of which shall be unexpired, including reversal agents and emergency medications;

(b)~~[2-]~~ **[Appropriate]** Devices to maintain an airway with positive pressure ventilation;

(c)~~[3-]~~ Anesthesia records, including monitoring and discharge records~~[and a check sheet]~~.

a. The check sheet shall be signed by the provider and the dentist and placed in each record.

- ~~b. If the dentist is the provider, only the dentist's signature shall be required];~~
- ~~(d)[4.] Monitoring equipment, including pulse oximeter, blood pressure monitor, and end tidal CO2 monitor. An electrocardiogram (EKG) shall be required for facilities providing deep sedation or general anesthesia;~~
- ~~(e) Defibrillator or automated external defibrillator (AED); and~~
- ~~(f) Precordial stethoscope or pretracheal stethoscope for deep sedation or general anesthesia in pediatric patients.[and blood pressure monitoring;~~
- ~~5. Electrocardiogram (EKG):~~
  - ~~a. May be present for use by Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, and Moderate Pediatric Sedation permit holders for patients with significant cardiac history; and~~
  - ~~b. Shall be present for use by Deep Sedation or General Anesthesia permit holders;~~
- ~~6. Defibrillator or automated external defibrillator (AED) for moderate and Deep Sedation or General Anesthesia permits; and~~
- ~~7. For deep sedation or general anesthesia in pediatric patients:~~
  - ~~a. A precordial stethoscope; or~~
  - ~~b. A pretracheal stethoscope.~~
- ~~(2) During a facility inspection, inspectors shall:~~
  - ~~(a) Examine the facility's equipment to determine if it is in proper working order;~~
  - ~~(b) Determine if appropriate emergency drugs are present; and~~
  - ~~(c) Determine if emergency drugs are nonexpired.~~

~~Section 15. Inducing a Level of Sedation for a Patient. (1) Administration of minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient requires at least the following appropriately trained individuals:~~

- ~~(a) The treating dentist;~~
- ~~(b) An individual trained and competent in basic life support (BLS) or its equivalent to assist the treating dentist; and~~
- ~~(c) Another individual trained and competent in BLS or its equivalent in close proximity to assist if needed.~~
- ~~(2) A dentist administering minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient shall not leave the site until the patient:~~
  - ~~(a) Is conscious;~~
  - ~~(b) Is spontaneously breathing;~~
  - ~~(c) Has stable vital signs;~~
  - ~~(d) Is ambulatory with assistance; and~~
  - ~~(e) Is under the care of a responsible adult.~~

~~(3) A treating dentist who allows a physician, another dentist, or certified registered nurse anesthetist to administer minimal pediatric sedation, moderate enteral sedation, moderate par- enteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia under Section 22 of this administrative regulation shall ensure that the physician, dentist, or certified registered nurse anesthetist shall not leave the site until the patient:~~

- ~~(a) Is conscious;~~
- ~~(b) Is spontaneously breathing;~~
- ~~(c) Has stable vital signs;~~
- ~~(d) Is ambulatory with assistance; and~~
- ~~(e) Is under the care of a responsible adult.~~

~~Section 16. Conscious Sedation Permits and General Anesthesia permits. (1) A dentist who holds a current general anesthesia permit may continue to administer anesthesia and sedation consistent with a Deep Sedation or General Anesthesia permit until the expiration date of the permit.~~

~~(2) A dentist who holds a current conscious sedation permit and meets the requirements of Section 9(4) of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Pediatric Sedation permit until the expiration date of the permit.~~

~~(3) A dentist who holds a current conscious sedation permit and meets the requirements of Section 8 of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Parenteral Sedation permit until the expiration date of the permit.~~

~~(4) During the license renewal process, current general anesthesia permit holders shall convert the permit to a Deep Sedation or General Anesthesia permit.~~

~~(5) During the license renewal process, current conscious sedation permit holders shall convert the permit to a minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, or moderate pediatric sedation permit.~~

~~(6) A dentist who currently practices enteral sedation without a permit may continue without a permit until January 1, 2012 and shall receive a Moderate Enteral Sedation permit by the submission of:~~

- ~~(a) Twenty-four (24) hours of didactic education plus twenty (20) sedation records documenting their experience; and~~
- ~~(b) Satisfactory completion of an on-site inspection as outlined in Section 14 of this administrative regulation.~~

~~Section 17. Issuance and Expiration of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permits.~~



(1) Once an applicant has met the qualifications for obtaining a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit the board shall issue a permit in sequential numerical order.

(2) Each permit issued under this administrative regulation shall expire on the same date as the permit holder's license to practice dentistry.

~~Section 18. Renewal of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation or General Anesthesia Permits. An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation or General Anesthesia permits shall:~~

~~(1) Submit a completed and signed Application for Renewal of Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520; and~~

~~(3) Provide evidence to the board that the applicant meets the continuing education requirements outlined in Section 19 of this administrative regulation.] [~~

**Section 13. Continuing Education Requirements for Renewal of a Permit. A qualified dentist applying for renewal of an active permit to administer moderate or deep sedation or general anesthesia shall:**

**(1) Complete at least four (4) hours of clinical continuing education related to sedation or anesthesia in a classroom setting during the two (2) year term of the permit; and**

**(2) Maintain ACLS or PALS certification as required by Sections 5 and 6 of this administrative regulation.][Section 19. Continuing Education Requirements for Renewal of a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia Permit.]**

~~(1) An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, or Moderate Pediatric Sedation permit shall:~~

~~(a) Complete at least six (6) hours of clinical continuing education related to sedation or anesthesia in a classroom setting that includes hands-on airway management during the two (2) year term of the permit; or~~

~~(b) Maintain ACLS or PALS certification.~~

~~(2) An individual desiring renewal of an active Deep Sedation or General Anesthesia permit shall:~~

~~(a) Complete not less than four (4) hours of on-site clinical continuing education related to sedation or anesthesia during the two (2) year term of the permit; and~~

~~(b) Maintain ACLS or PALS certification.~~

- ~~(3) Continuing education required by this administrative regulation shall:~~  
~~(a) Not be used to satisfy other continuing education requirements; and~~  
~~(b) Be in addition to other continuing education requirements of 201 KAR 8:532.~~

~~Section 20. Facilities Inspected Prior to February 1, 2011. A facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate for a facility which passed an inspection by the board prior to February 1, 2011 shall provide proof to the board of having passed a facility inspection for the purpose of issuing a conscious sedation or general anesthesia. Section 21. Issuance of an Anesthesia and Sedation Facility Certificate. Once an applicant has met the qualifications for obtaining an Anesthesia and Sedation Facility Certificate the board shall issue a certificate in sequential numerical order.~~

~~Section 22. Administration by a Physician Anesthesiologist, Dentist, or Certified Registered Nurse Anesthetist at the Facility of a Treating Dentist.~~

~~(1) A treating dentist may allow at his or her dental facility, administration of sedation or anesthesia by a:~~

~~(a) Kentucky-licensed physician anesthesiologist or a Kentucky-licensed Certified Registered Nurse Anesthetist; or~~

~~(b) Dentist who holds an anesthesia and sedation permit.~~

~~(2) Administration by an individual listed in subsection (1)(a) of this section shall:~~

~~(a) Comply with this administrative regulation; and~~

~~(b) Not require board review.~~

~~(3) Nothing in this section shall preclude a dentist from working with a Kentucky-licensed physician anesthesiologist or a Kentucky-licensed Certified Registered Nurse Anesthetist in an ambulatory care center or hospital.]~~

Section ~~13~~~~14~~[23]. Morbidity and Mortality Incident Reports. (1) A dentist shall report to the board, in writing, any death caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within seven (7) days after **the death[its occurrence]**.

(2) A dentist shall report to the board, in writing, any incident that resulted in hospital in-patient admission or emergency room visit caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within thirty (30) days after **the hospitalization or emergency room visit[its occurrence]**.

(3) The written report to the board required in subsections (1) and (2) of this section shall include:

(a) The date of the incident;

(b) The name, age, and address of the patient;

- (c) The patient's original complete dental records;
- (d) The name and permit~~[license]~~ number of the dentist~~[licensee]~~ and the name and address of all other persons present during the incident;
- (e) The address where the incident took place;
- (f) The preoperative physical condition of the patient;
- (g) The type of anesthesia and dosages of drugs administered to the patient;
- (h) The techniques used in administering the drugs;
- (i) Any adverse occurrence including:
  - 1. The patient's signs and symptoms;
  - 2. The treatment instituted in response to adverse occurrences;
  - 3. The patient's response to the treatment; and
  - 4. The patient's condition on termination of any procedures undertaken; and
- (j) A narrative description of the incident including approximate times and evolution of symptoms.

(4) The duties **established**~~[outlined]~~ in this section shall apply to every dentist who administers any type of sedation or anesthesia.

Section **14**~~[15]~~**[24]**. Registered Dental Assistant Duties **while Working** ~~[permitted when working]~~ with Sedation Permit **Holders**~~[holders]~~. A registered dental assistant working with a qualified dentist administering sedation or anesthesia **in accordance with**~~[under]~~ this administrative regulation may, under direct supervision:

- (1) Apply noninvasive monitors on the patient;
- (2) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative, and post-operative (recovery) phases of treatment;
- (3) Report monitoring parameters **at pre-determined intervals, and if**~~[to the operating dentist on a periodic basis and when]~~ changes in monitored parameters occur;
- (4) Record vital sign measurements in the sedation record;
- (5) Establish and remove intravenous lines if the registered dental assistant has completed training in intravenous access;
- (6) Assist in the management of a patient emergency; and
- (7) Administer medications into an existing intravenous line upon the verbal order and direct supervision of a qualified dentist **in accordance with this administrative**~~[under this]~~ regulation.

Section **15**~~[16]~~. Administration by ~~[an Independently Practicing]~~ Qualified Anesthesia Provider. (1) An operating dentist may **authorize**~~[permit]~~ the administration of sedation or anesthesia by a **qualified anesthesia provider**:

- ~~(a) Kentucky-licensed independently practicing qualified anesthesia provider; or~~

**~~(b) Kentucky-licensed dentist qualified to administer sedation or anesthesia.~~**

(2) The administration of anesthesia or sedation by an individual established~~[listed]~~ in subsection (1) of this section shall:

(a) Comply with the requirements of this administrative regulation; and

(b) Not require board review prior to the administration of sedation or anesthesia.

(3) Nothing in this section shall preclude a dentist from working with a **[Kentucky-licensed independently practicing-]**qualified anesthesia provider to provide care in an ambulatory care center or hospital.[:

~~(1) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia permit holders may, under direct supervision:~~

~~(a) Apply noninvasive monitors;~~

~~(b) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative and post-operative (recovery) phases of treatment;~~

~~(c) Report monitoring parameters to the operating dentist on a periodic basis and when changes in monitored parameters occur;~~

~~(d) Record vital sign measurements in the sedation record; and~~

~~(e) Remove IV lines (Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders only).~~

~~(2) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders, may under direct supervision assist in the management of emergencies.~~

~~(3) A registered dental assistant working with Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders may, under direct supervision:~~

~~(a) Administer medications into an existing IV line upon the verbal order and direct supervision of a dentist with a Moderate Parenteral Sedation, Moderate Pediatric or Deep Sedation or General Anesthesia permit; and~~

~~(b) Establish an IV line under direct supervision if they have completed a course approved by the Board of Dentistry in intravenous access.]~~

Section 16~~[25]~~. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Sedation or Anesthesia Permit", **March 2020**~~[February 2011]~~;

(b) "Application for Sedation or Anesthesia Facility Certificate", **March 2020**~~[February 2011]~~; and

(c) "Sedation ~~or~~<sup>of</sup> Anesthesia Permit Location Notification Form", **March 2020**~~[February 2011]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.



## BOARD OF DENTISTRY

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Governor

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Jeff Allen  
Executive Director

May 29, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Compiler  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: 201 KAR 8:590, Teledentistry

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 8:590, the Board of Dentistry proposes the attached amendment to 201 KAR 8:590.

Sincerely,

A handwritten signature in black ink, appearing to read "JA", with a stylized flourish extending from the end.

Jeff Allen, Executive Director  
Kentucky Board of Dentistry  
312 Whittington Pkwy, Ste 101  
Louisville, KY 40222

**SUGGESTED SUBSTITUTE**  
**Final 5/7/2020 9:02 AM**

**BOARDS AND COMMISSIONS**  
**Kentucky Board of Dentistry**

**201 KAR 8:590. Teledentistry.**

RELATES TO: KRS ~~313.101(11)~~, 313.021(1)(c), ~~313.060(9)~~, ~~422.317, 42 U.S.C. 1320d-2 – 1320d-8~~

STATUTORY AUTHORITY: KRS 313.021(1)(c), KRS 313.060(8), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(c) ~~requires~~***[authorizes]*** the board to ~~[exercise all administrative functions of the Commonwealth in the regulation of the profession of dentistry, and to]~~ promulgate administrative regulations ~~for any license or registration the board creates~~***[to carry out the provisions of the chapter]***. KRS 313.060(8) and (9) require the board to promulgate administrative regulations to provide for the practice of teledentistry in the Commonwealth of Kentucky. This administrative regulation establishes requirements and procedures for the practice of teledentistry.

Section 1. Definition. "Teledentistry" means the use of electronic and digital communications to provide ~~[and deliver]~~ dentistry and dental hygiene-related information and services.

Section 2. Practice of Teledentistry.

(1) To deliver teledentistry services in Kentucky, one ~~shall have~~***[must hold]*** a current, valid dental or dental hygiene license issued by the Board of Dentistry. The practice of dentistry ~~shall occur~~***[occurs]*** where the patient is located at the time teledentistry services are initiated.

(2) This administrative regulation shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting~~[,]~~ or in a manner~~[,]~~ not authorized by ~~KRS Chapter 313~~***[law. Licensees delivering teledentistry services shall comply with all rules of professional conduct and state and federal statutes relevant to dentistry and dental hygiene]***. Teledentistry encounters shall be held to the same standard of care as a traditional in-person patient encounter.

(3)***(a)*** A patient ~~shall only~~***[may]*** be treated via teledentistry by:

***1. (a)*** A Kentucky licensed dentist; or

***2. (b)*** A Kentucky licensed dental hygienist who is supervised by, and has delegated authority from, a Kentucky licensed dentist.

~~(b)(6)~~ Any individual may provide any photography ~~or[and/or]~~ digital imaging to a Kentucky licensed dentist or Kentucky licensed dental hygienist for the sole and limited purpose of screening, assessment, ~~or[and/or]~~ examination. Anyone providing ~~[such]~~ photography ~~or[and/or]~~ digital imaging to a Kentucky licensed dentist or Kentucky licensed dental hygienist **shall comply with the**~~[must follow the]~~ same standards required for the recording of ~~[such]~~ photography ~~or[and/or]~~ digital imaging **in accordance with**~~[and are limited by]~~ KRS 313.010(11).

(4) A licensee using teledentistry ~~[services]~~ in the provision of dental services to a patient shall ~~[take appropriate steps to]~~ establish the licensee-patient relationship and conduct **an evaluation**~~[all appropriate evaluations]~~ and history of the patient.

Section 3. Informed Consent. A licensee shall, to the extent possible:

- (1) Confirm the identity of the requesting patient;~~;~~
- (2) Verify and authenticate the patient's health history;
- (3) Disclose the licensee's identity, applicable credentials, and contact information, including a current phone number;~~;~~
- (4) Obtain an ~~[appropriate]~~ informed consent from the requesting patient after disclosures have been made regarding the delivery models and treatment methods and limitations, to include any special informed consents regarding the use of teledentistry services. At a minimum, the informed consent shall inform the patient or legal guardian and document acknowledgment of the risk and limitations of:
  - (a) The use of electronic and communications in the provision of care;
  - (b) The potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care;
  - (c) The potential disruption of electronic and digital communication in the use of teledentistry; **and**
  - (d) The types of activities permitted using teledentistry services;

**(5) Inform**~~(6)~~ the patient or legal **guardian**~~[guardian's understanding]~~ that it is the role of the licensee to determine whether the condition being diagnosed or treated is appropriate for a teledentistry encounter;

**(6) State the**~~(7) A~~ requirement for explicit patient or legal guardian consent to forward patient-identifiable information to a third party; and

**(7) Provide to the patient**~~(8) The~~ contact information for the Kentucky Board of Dentistry and a description of, or link to, the patient complaint process.

Section 4. Confidentiality. The licensee shall ensure that any electronic and digital communication used in the practice of teledentistry **shall be**~~[is]~~ secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), **42 U.S.C. 1320d-2 – 1320d-8**, and all other applicable laws **and**~~;~~ administrative regulations~~;~~ **and guidance**. **[Confidentiality**



~~**shall be maintained through appropriate processes, practices and technology, including the disposal of electronic and digital equipment and data.]**~~

#### Section 5. Dental Records.

(1) Any dental record made through teledentistry shall be **in compliance with 201 KAR 8:540, Section 2(1) and (2)**~~**[held to the same record retention standards as a record made through a traditional in-person dental encounter].**~~

(2) An informed consent obtained in connection with teledentistry services shall be filed in the patient's dental record.

(3) The **release of** patient **records[record]** established during the use of teledentistry **shall comply with KRS 422.317**~~**[services shall be accessible to both the licensee and the patient or legal guardian, consistent with all established laws and administrative regulations governing patient healthcare records].**~~

(4) The licensee shall document or record in the file:

(a) The patient's **chief complaint**~~**[presenting problem];**~~

(b) The licensee's **differential diagnosis**~~**[chief concern];**~~

(c) The **licensee's recommended treatment plan for the patient**~~**[patient's diagnosis; (d) The patient's treatment plan];**~~ and

**(d)[(e)]** A description of all services provided by teledentistry.

#### Section 6. Prescribing.

(1) The indication, appropriateness, and safety considerations for each prescription for medication, laboratory services, or dental laboratory services provided through the use of teledentistry services shall be evaluated by the licensee in accordance with **201 KAR 8:540, Section 3**~~**[applicable law and current standards of care, including those for appropriate documentation].**~~

**(2)** A licensee's use of teledentistry carries the same professional accountability as a prescription issued in connection with an in-person encounter.

~~**[(2) A licensee who prescribes any kind of analgesic or pain medication as part of the provision of teledentistry services shall comply with all applicable KASPER requirements.]**~~

Section 7. Representation of Services. A licensee using teledentistry to deliver dental services or who practices teledentistry shall not:

(1) Directly or indirectly engage in false, misleading, or deceptive advertising of teledentistry services; or

(2) Allow fee-splitting for the use of teledentistry services.

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## KENTUCKY BOARD OF NURSING

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Andy Beshear  
Governor

June 4, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Complier  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort, KY 40601

Re: 201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:057, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:057.

Sincerely,

A handwritten signature in black ink, reading "Morgan G. Ransdell". The signature is written in a cursive style with a large, stylized "M" and "R".

Morgan G. Ransdell, General Counsel  
Kentucky Board of Nursing  
312 Whittington Parkway, Suite 300  
Louisville, KY 40222

**SUGGESTED SUBSTITUTE**  
**Final 6/4/2020 8:38 AM**

**GENERAL GOVERNMENT CABINET**  
**Board of Nursing**

**201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.**

RELATES TO: KRS 218A.172, 218A.205(3)(a), (b), 314.011(7), ~~[314.011](8)~~, 314.042, 314.193(2), 314.195, 314.196~~[, National Transportation Safety Board Safety Recommendation 1-14-1.]~~

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS Chapter 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation ~~establishes~~establish~~[establishes]~~ the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) **"Immediate family" means a spouse, parent, child, sibling, parent-in-law, son-in-law, daughter-in-law, brother in-law, sister in-law, step-parent, step-child, step-sibling, or other relative residing in the same residence as a prescribing practitioner.**

**(5)** "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting System established in KRS 218A. 202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions **established[defined]** in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

- (a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;
- (b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;
- (c) Neonatal Nursing: Scope and Standards of Practice;
- (d) Nursing: Scope and Standards of Practice;
- (e) Pediatric Nursing: Scope and Standards of Practice;
- (f) Psychiatric- Mental Health Nursing: Scope and Standards of Practice;
- (g) Scope of Practice for Nurse Practitioners;
- (h) Standards of Practice for Nurse Practitioners;
- (i) Scope of Nurse Anesthesia Practice;
- (j) Standards for Nurse Anesthesia Practice;
- (k) Standards for Office Based Anesthesia Practice;
- (l) Standards for the Practice of Midwifery;
- (m) **Oncology Nursing**~~[Statement on the]~~ Scope and Standards of ~~[Oncology Nursing]~~ Practice~~[- Generalist and Advanced Practice]~~;
- (n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education; and
- (o) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, diagnostic tests, and performing certain procedures **that shall be[which are]** consistent with the scope and standards of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined **by[in]** KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the:

**1.** Name;

**2.[,]** Practice address;

**3.[,]** Phone number;

**4.[, and]** License number of both the advanced practice registered nurse and each physician who is a party to the agreement; **and**

**5. ~~[It shall also include the]~~** Population focus and area of practice of the advanced practice registered nurse.

(b) Pursuant to KRS 314.196(2), an advanced practice registered nurse shall use the Common CAPA-NS form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the APRN Prescriptive Authority Notification Form.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall **consider**~~[by guided by]~~ the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS, shall obtain a ~~[report all of his or her]~~ United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate and shall report all DEA numbers, including a DEA-X Controlled Substance Registration Certificate, and any change in the status of a certificate ~~[to the board when issued to the APRN]~~ by providing ~~[mailing]~~ a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) ~~[Any change in the status of a DEA Controlled Substance Registration Certificate, including a DEA X Controlled Substance Registration Certificate, shall be reported in writing to the board within thirty (30) days.]~~ An APRN with a CAPA-CS shall register for a master account with the Kentucky All Schedule Prescription Electronic Reporting System (KASPER) prior to prescribing controlled substances. A copy of the registration certificate shall be submitted to the board within thirty (30) days of receipt of confirmation of registration by KASPER.

(5) An APRN shall report any changes to a CAPA-NS or a CAPA-CS ~~[in writing]~~ to the board within thirty (30) days.

(6) If the collaborating physician's license is suspended, the APRN shall follow the procedures **established**~~[set out]~~ in KRS 314.196 for a CAPA-NS. The APRN with a CAPA-CS shall cease prescribing controlled substances until the suspension is lifted or a new collaborating physician signs a new CAPA-CS.

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

(8) All documents and information required to be reported to the board by this section shall be reported by uploading the document or information through the board's

Web site, [kbn.ky.gov](http://kbn.ky.gov), utilizing the tab APRN Update. The board shall not accept documents or information sent in any other format.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except ***if[when]*** a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or ***if*** the provisions of KRS 314.196(4)(b) apply.

Section 8. The board may make an unannounced visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to APRN with a CAPA-CS, if prescribing a controlled substance. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN'S role and population focus. This section does not alter the prescribing limits ***established[set-out]*** in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in ***psychiatric -[psychiatric/]*** mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian~~[;]~~ or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued ***once[when]*** the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed, **including the risk of tolerance and drug dependence** with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian[,], or health care surrogate[, **including the risk of tolerance and drug dependence**].

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for the twelve (12) month period immediately preceding the request for available data on the patient[~~before issuing a new prescription or a refill for a controlled substance~~]. The APRN shall maintain in the patient's record all KASPER report identification numbers and the date of issuance of each KASPER report or a copy or saved image of the KASPER report[~~in the patient's record~~]. If neither an identification number nor an image can be saved to the patient's record as a result of technical limitations of the APRN's electronic health record system, the APRN shall make a concurrent note in the patient's record documenting the date and time that the APRN reviewed the patient's KASPER report.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, non-cancer pain, the APRN. In addition to the requirements of this section, shall obtain a baseline drug screen and further random drug screens if the APRN:

(a) Finds a drug screen [~~to be~~] clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b).

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient, and document the information in the patient's medical record. An APRN certified in **psychiatric** -[~~psychiatric~~] mental health shall obtain a medical and psychiatric history, per-

form a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and document the data in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, the patient's legal guardian, or health care surrogate, including the risks of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to the treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure of the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;



2. As part of the patient's hospice or end-of-life treatment;  
3. For the treatment of pain associated with cancer or with the treatment of cancer;  
4. To assist a patient **with[when]** submitting to a diagnostic test or procedure;  
5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber:

- a. Substitutes a controlled substance for the initial prescribing;
- b. Cancels any refills for the initial prescription; and
- c. Requires the patient to dispose of any remaining unconsumed medication;~~;~~**[-]**

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an **established[establish]**[established] patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) **In accordance with 21 C.F.R. 1306.12(b)(1)(iv) - (v)**, federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not apply to APRNs in this state.

(13) No less than once every six (6) months, an APRN who holds a DEA Controlled Substance Registration Certificate [~~has prescribed controlled substances~~] shall review a reverse KASPER report for the preceding six (6) months to determine **if[whether]** the information contained in KASPER is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information, **by**:

(a)**[By]** First contacting the reporting pharmacy;

(b)**[By]** Contacting law enforcement if suspected fraudulent activity; or

(c)**[By]** Contacting the Drug Enforcement Professional Practices Branch, Office of [the] Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, **except if[with the following exceptions]**:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options ***that[which]*** justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically. ***Electronic prescription shall be as established in[pursuant to] KRS 218A.171.***

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication ***could[may]*** have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 10. Immediate Family and Self-prescribing or Administering Medications. (1) An APRN shall not ***self*** prescribe or administer controlled substances***[to his or her self]***.

(2) An APRN shall not prescribe or administer controlled substances to his ***or her*** immediate family except as ***established in subsections (3) and (4) of this section[provided herein]***.

(3)***[Immediate family shall include a spouse, parent, child, sibling, parent-in-law, son or daughter-in-law, brother or sister-in-law, step-parent, step-child, step-sibling, or other relative residing in the same residence as the prescribing practitioner.***

***(4)]*** An APRN may prescribe or administer controlled substances to an immediate family member:

(a) In an emergency situation;

(b) For a single episode of an acute illness through one ***(1)*** prescribed course of medication; or

(c) In an isolated setting, ***if[when]*** no other qualified practitioner is available.

~~(4)~~~~(5)~~(a) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsections ~~(3)~~~~(4)~~(a) or (b) of this section shall document all relevant information and notify the appropriate provider.

(b) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsection ~~(3)~~~~(4)~~(c) of this section shall maintain a provider-practitioner relationship and appropriate patient records.

Section 11. Incorporation by Reference. (1) The following material is incorporate[incorporated] by reference:

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2017 Edition, American Association of Critical-Care Nurses;

(b) "ACCN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/ National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/ Society of Pediatric Nursing/ National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing: Scope and Standards of Practice", 2014, American Nurses Association/ American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2019 [2015] Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2019 [2013] Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2019 [2013] Edition, American Association of Nurse Anesthetists;

(k) "[Standards for]Office Based Anesthesia[Practice]", 2019 [2018] Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse Midwives;

(m) "Oncology Nursing Scope and Standards of Practice[Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice]", 2019 [2013] Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2012 [2014] Edition, American College of Nurse Midwives;

(p) "Standards for Professional Nursing Practice in the Care of Women and Newborns", 2019 Edition, Association of Women's Health, Obstetric and Neonatal Nurses;

(q) "APRN Prescriptive Authority Notification Form", 6/2018, Kentucky Board of Nursing; and

(r) ~~(q)~~ "Common CAPA-NS Form", 6/2015, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

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## KENTUCKY BOARD OF NURSING

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Andy Beshear  
Governor

June 4, 2020

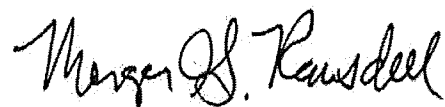
Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Complier  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort, KY 40601

Re: 201 KAR 20:162. Disciplinary proceedings.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:162, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:162.

Sincerely,



Morgan G. Ransdell, General Counsel  
Kentucky Board of Nursing  
312 Whittington Parkway, Suite 300  
Louisville, KY 40222

**SUGGESTED SUBSTITUTE**  
**Final 6/4/2020 9:14 AM**

**BOARDS AND COMMISSIONS**  
**Board of Nursing**

**201 KAR 20:162. Disciplinary proceedings.**

RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.091(8), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.091(2) requires that an administrative hearing for the denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B. KRS 314.091(8) authorizes the board, by administrative regulation, to provide for the recovery of costs of an administrative hearing. This administrative regulation establishes procedures for conducting an administrative hearing **relating to disciplinary action**.

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Composition of the Hearing Panel.

(1)(a) Except as **established[provided]** in paragraph (b) of this subsection, a disciplinary action shall be heard by a hearing panel consisting of two (2) members of the board, one (1) of **whom[which]** shall be a registered nurse, and a hearing officer, who shall be:

1. An assistant attorney general; or
2. Other attorney **appointed[designated]** by the board.

(b) A hearing officer and one (1) member of the board may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license; or
2. Removal of a license from probationary status.

(2) A board member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

- (a) Discussed the merits of the action with agency staff;
  - (b) Personal knowledge of the facts giving rise to the disciplinary action; or
  - (c) Participated in the investigation of a disciplinary action.
- (3) The hearing shall be transcribed by a court stenographer **or video recorded**.

Section 3. Response to Charges. The licensee or applicant shall file with the board a written answer to the specific allegations contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer may result in the issuance of a default order

pursuant to KRS 13B.080(6). The hearing officer shall for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall **be eligible to cast[have]** one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1)[,] that shall be:

- (a) Consistent with the panel's deliberations; and
- (b) Submitted to the full board.

Section 6. Continuances; Proceedings in Absentia. **(1)** The board shall not postpone a case **that[which]** has been scheduled for a hearing absent good cause. A request by a licensee or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause.

**(2)** The decision **of** whether **or not** to grant a continuance shall be made by the hearing officer.

**(3)** The burden shall be upon the licensee or applicant to be present at a scheduled hearing.

**(4)** Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. Hearing Costs. (1) If the order of the board is adverse to a licensee or applicant[,], or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314, the board may impose the following costs:

- (a) The cost of stenographic services;
- (b) The cost of the hearing officer as determined by subsection (2) of this section; and
- (c) Other costs listed in subsection (3) of this section as applicable.

(2) The cost of the hearing officer shall be determined as **established in paragraphs (a) through (c) of this subsection. The cost of a[follows]:**

- (a)**[A]** Disciplinary hearing shall be \$400 per day;
  - (b)**[A]** Reinstatement hearing shall be \$350; and
  - (c)**[A]** Default shall be \$300.
- (3) Other costs may include:

- (a) Expert witness costs, including travel;
- (b) Travel for other witnesses;
- (c) Document reproduction costs; and
- (d) The cost of a certified copy of laboratory testing records.

**~~[(4) In a case of financial hardship, the board may waive all or part of the costs.]~~**

Section 8. Reconsideration of Default Orders. (1) A default order issued by the board may be reconsidered.

(2) The party in default shall submit a written motion to the hearing officer requesting reconsideration.

(3) The hearing officer shall schedule a hearing on the motion for reconsideration. The hearing officer may order that the default order be set aside if the party in default presents good cause.

(4) If a default order is set aside, the provisions of 201 KAR 20:161 shall apply.

Section 9. Prescribing or Dispensing Controlled Substance Cases. (1) An investigation pertaining to prescribing or dispensing of a controlled substance shall produce a charging decision by the board within 120 days of the receipt of the complaint unless the circumstances of a particular complaint make it impossible to timely produce the charging decision.

(2) The board may hold an investigation pertaining to prescribing or dispensing of a controlled substance in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency.

(3) If an investigation pertaining to prescribing or dispensing of a controlled substance does not produce a charging decision within 120 days of the receipt of the complaint, the investigative report shall plainly state the circumstances of that particular investigation or complaint that made timely production of a charging decision impossible.

Section 10. Change in Licensure Status. (1) Pursuant to the Nurse Licensure Compact, KRS 314.475, if a nurse whose primary state of residence is Kentucky and who holds a Kentucky license with multistate privileges incurs a disqualifying event, the license shall be converted to a single state license valid only in Kentucky.

(2) The disqualifying events that may cause this change in status **shall be[are]:**

(a) Conviction or found guilty of or entered into an agreed disposition of a felony offense;

(b) Conviction or found guilty of or entered into an agreed disposition of a misdemeanor offense related to the practice of nursing;

(c) **Current enrollment[Currently enrolled]** in an alternative program; or

(d) **[Holds]** An encumbered nursing license or privilege to practice due to disciplinary action.

(3)(a) The board shall inform the nurse in writing of its intent to change the status of the Kentucky license.



(b) The nurse may request an administrative hearing on this action. ~~A~~~~[Any such]~~ request shall be made in writing to the board within twenty (20) days.

(c) Failure to request an administrative hearing within **twenty (20) days**~~[the specified time]~~ shall constitute a waiver of the right to a hearing.

(4) The procedure **established**~~[outlined]~~ in this section **shall not be**~~[is not]~~ in lieu of but may be in addition to any potential disciplinary action the board may seek based on the disqualifying event.

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## KENTUCKY BOARD OF NURSING

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Andy Beshear  
Governor

June 4, 2020

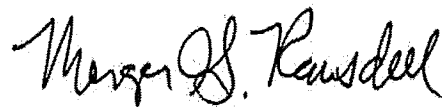
Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Complier  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort, KY 40601

Re: 201 KAR 20:230. Renewal of licenses.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:230, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:230.

Sincerely,



Morgan G. Ransdell, General Counsel  
Kentucky Board of Nursing  
312 Whittington Parkway, Suite 300  
Louisville, KY 40222

**SUGGESTED SUBSTITUTE**  
**Final 5/28/2020 12:37 PM**

**BOARDS AND COMMISSIONS**  
**Board of Nursing**

**201 KAR 20:230. Renewal of licenses.**

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes requirements and procedures for the renewal of **nursing** licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

- (1) Hold a valid and current license issued by the board;
- (2) Submit a completed application form as required by 201 KAR 20:370~~[, Section 1(1),]~~ to the board office~~[, postmarked no later than the last day of the licensure period];~~
- (3) Submit the current fee required by 201 KAR 20:240;
- (4) Have met requirements of 201 KAR 20:215, if applicable;
- (5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation;
- (6) Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on nursing or other professional or business licenses in other jurisdictions; and
- (7) Have paid all monies due to the board.

Section 2. The licensure period for renewal of licenses shall be as **established[specified]** in 201 KAR 20:085.

Section 3. (1) If the application form is submitted on-line, it shall be received by the board prior to midnight on the last day of the licensure period.

(2) If a paper application is submitted, it shall be received no later than the last day of the licensure period. If the application is not received by the board until after the last day of the licensure period, the application shall have been postmarked at least seven (7) days prior to the last day of the licensure period.~~**[Otherwise, subsection (4) of this section shall apply.]**~~

(3) All information needed to determine that an applicant meets the requirements for renewal of licensure shall be received by the board no later than the last day of the licensure period. If the information is not received by the board until after the last day of the licensure period, in order to be considered by the board for the current renewal, the information shall have been postmarked at least seven (7) days prior to the last day of the licensure period.~~**[Otherwise, subsection (4) of this section shall apply.]**~~

(4) Failure to comply with these requirements shall result in the license lapsing. A person whose license has lapsed shall **comply with**~~follow the requirements of~~ 201 KAR 20:225 to reinstate the license.

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## KENTUCKY BOARD OF NURSING

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Andy Beshear  
Governor

June 4, 2020

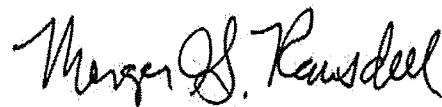
Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Complier  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort, KY 40601

Re: 201 KAR 20:370. Applications for licensure.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:370, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:370.

Sincerely,



Morgan G. Ransdell, General Counsel  
Kentucky Board of Nursing  
312 Whittington Parkway, Suite 300  
Louisville, KY 40222

**SUGGESTED SUBSTITUTE**  
**Final 5/28/2020 12:49 PM**

**BOARDS AND COMMISSIONS**  
**Board of Nursing**

**201 KAR 20:370. Applications for licensure.**

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for nursing licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application form to the board office, for[as follows]:

(a)[**For**] RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b)[**For**] RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;

(c)[**For**] Licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d)[**For**] Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e)[**For**] Licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f)[**For**] Retired licensure status, Application for Retired Status;

(g)[**For**] APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky);

(h)[**For**] APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; or

(i) In addition to any other renewal form, for APRN renewal, APRN Practice Data;

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

- (5) Have paid all monies due to the board;
- (6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;
- (7) Submit additional information as required by the board in 201 KAR Chapter 20;
- (8) Meet the additional requirements for:
  - (a) Licensure by examination established by 201 KAR 20:070;
  - (b) Licensure by endorsement established by 201 KAR 20:110;
  - (c) Licensure by reinstatement established by 201 KAR 20:225;
  - (d) Licensure by renewal established by 201 KAR 20:230;
  - (e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or
  - (f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;
- (9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and
- (10) Notify the board upon establishment of a new mailing address.

Section 2. ~~[A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure shall be postmarked or received by the board no later than the last day for renewal of license.~~

~~Section 3.]~~ An application shall lapse and the fee shall be forfeited if the application is not completed **[as follows]**:

- (1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;
- (2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or
- (3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section ~~3~~.4.] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Licensure", 1/2016, Kentucky Board of Nursing;
- (b) "Annual Licensure Renewal Application: RN or LPN", 2/2020 ~~{2/2018}~~, Kentucky Board of Nursing;
- (c) "Application for Licensure as an Advanced Practice Registered Nurse", 1/2016, Kentucky Board of Nursing;
- (d) "Annual Licensure Renewal Application: RN and APRN", 2/2020 ~~{2/2018}~~, Kentucky Board of Nursing;
- (e) "Application for RN and APRN Licensure", 1/2016, Kentucky Board of Nursing;
- (f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;
- (g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 2/2020 ~~{5/2018}~~, Kentucky Board of Nursing;

(h) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 2/2020  
~~[5/2019]~~, Kentucky Board of Nursing; and

(i) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.



502-429-3300  
800-305-2042  
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## KENTUCKY BOARD OF NURSING

312 Whittington Parkway, Suite 300  
Louisville, Kentucky 40222-5172  
kbn.ky.gov



Andy Beshear  
Governor

June 4, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Complier  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort, KY 40601

Re: 201 KAR 20:410. Expungement of records.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 20:410, the Kentucky Board of Nursing proposes the attached amendment to 201 KAR 20:410.

Sincerely,

A handwritten signature in black ink that reads "Morgan G. Ransdell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Morgan G. Ransdell, General Counsel  
Kentucky Board of Nursing  
312 Whittington Parkway, Suite 300  
Louisville, KY 40222

**SUGGESTED SUBSTITUTE**  
**Final 5/28/2020 2:34 PM**

**BOARDS AND COMMISSIONS**  
**Board of Nursing**

**201 KAR 20:410. Expungement of records.**

RELATES TO: KRS 314.131

STATUTORY AUTHORITY: KRS 314.131(1), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) and (9) authorize the Board of Nursing to promulgate administrative regulations to establish which disciplinary records may be expunged. This administrative regulation establishes which records may be expunged and the procedure for expungement.

Section 1. Definition. "Expungement" means that all affected records shall be sealed and that the proceedings to which they refer shall be deemed never to have occurred.

Section 2. A nurse whose record has been expunged may state[properly reply] that disciplinary records do not exist upon inquiry.

Section 3. Upon a request from a nurse against whom disciplinary action has been taken, the board shall expunge records relating to the following categories of disciplinary action:

(1) Consent decrees that are at least five (5) years old if all the terms of the consent decree have been met; ~~[-]~~

(2) ~~[Agreed orders and decisions that are at least ten (10) years old and which concern one (1) or more of the following categories, if there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met:~~

~~(a) Failed to timely obtain continuing education or AIDS education hours;~~

~~(b) Paid fees that were returned unpaid by the bank; or~~

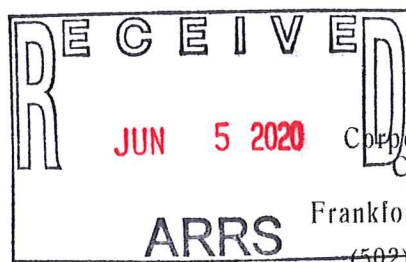
~~(c) Practiced as a nurse or advanced practice registered nurse without a current license, provisional license, or temporary work permit.~~

~~(3)]~~ Agreed orders and decisions that are at least ten (10) years old and that[which] resulted in a reprimand, if there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met; and[-]

~~(3)[(4)]~~ Agreed orders and decisions that are at least twenty (20) years old, if there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met.

Section 4. The board shall not report cases that have been expunged to another state agency, other board of nursing, or other organization.

Ryan F. Quarles  
Commissioner



Corporate Drive  
Complex  
Frankfort, KY 40601  
(502) 573-0282

## Kentucky Department of Agriculture

June 5, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: 302 KAR 10:015. Egg grading and classification

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 10:015 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 10:015.

Sincerely,

<Electronically signed on this date>

Clint Quarles  
Staff Attorney  
Kentucky Department of Agriculture  
107 Corporate Drive  
Frankfort, KY 40601



**Suggested Amendment  
GENERAL GOVERNMENT CABINET  
Department of Agriculture  
Office of the Consumer and Environmental Protection  
(Amended After Comments Version)**

**302 KAR 10:015. Egg grading and classification.**

**Page 1**

**Section 1**

**Line 12**

After "Kentucky", insert ";(1)".

Capitalize the first letter of "as", immediately following.

After "graded eggs", insert "shall".

Delete "must".

**Line 13**

After "the", insert "U.S.".

Delete "US".

After "standards, grades", insert a comma.

**Lines 13-14**

After "listed in", delete "in".

**Line 14**

After "United", insert "States".

Delete "State".

After "Agriculture", insert ", USDA".

**Line 15**

After "Manual", insert ";(2) As".

Delete the comma immediately following.

After "ungraded", insert the following;

eggs shall meet the requirements

After "of this administrative regulation", insert a semicolon.

Delete the comma immediately following.

After "or", insert "(3) Shall be used".

**Page 1**

**Section 2(1)**

**Line 18**

After "sale in cartons", insert "shall".

Delete "must".

**Page 2**

**Section 2(3)**

**Line 4**

After "decomposed substance.", insert the following:

(4) The determination of inedible eggs, the sampling to determine the grade, and the determination of quality with shell, albumen, and yoke specifications shall also be governed by the United States Department of Agriculture, USDA Egg Grading Manual.

**Page 2**

**Section 3(1) and Section 3(1)(a)**

**Lines 5-6**

After "(1)", delete the following:

The following material is incorporated by reference: (a)

**Page 2**

**Section 3(1)(a)**

**Line 6**

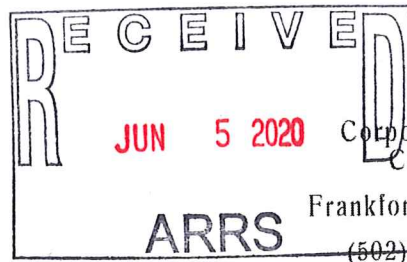
After "Manual", and the closing quotation marks, insert a comma.

After "2000", insert the following:

, is incorporated by reference.

Delete ",."

Ryan F. Quarles  
Commissioner



Corporate Drive  
Complex  
Frankfort, KY 40601  
(502) 573-0282

## Kentucky Department of Agriculture

June 5, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: 302 KAR 10:025. License application, refusal, revocation, suspension, and appeals

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 10:025 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 10:025.

Sincerely,

<Electronically signed on this date>

Clint Quarles  
Staff Attorney  
Kentucky Department of Agriculture  
107 Corporate Drive  
Frankfort, KY 40601



**Suggested Amendment**  
**GENERAL GOVERNMENT CABINET**  
**Department of Agriculture**  
**Office of the Consumer and Environmental Protection**

**302 KAR 10:025. License application, refusal, revocation, suspension, and appeals.**

**Page 1**

**RELATES TO**

**Line 6**

After "KRS", insert "260.550, 260.560,"

After "260.580", insert ", 260.600".

**Page 1**

**STATUTORY AUTHORITY**

**Line 7**

After "KRS", insert "260.560,".

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 8**

After "CONFORMITY:", insert the following:

KRS 260.560 requires the department to administer all provisions and exercise all administrative powers in egg marketing law and authorizes the department to promulgate administrative regulations necessary to carry out the provisions of the egg marketing law. KRS 260.580 requires the department to prescribe reasonable administrative regulations setting up standards governing the form and schedule for processing applications for egg licenses, the determination of whether an application for license shall be granted or denied, and the grounds for the suspension and revocation of a license.

**Page 1**

**Section 2**

**Line 14**

After "may be denied", insert "if".

Delete "where".

**Line 15**

After "provided in KRS", insert "260.540 to 260.560".

Delete "Chapter 260".

**Page 1**

**Section 3**

**Line 17**

After "Licenses.", insert "If".

Delete "When".

**Line 19**

After "handled in", delete "such".

**Page 2**

**Section 3**

**Lines 1-2**

After "The inspector", insert "shall".

Delete "will".

**Line 2**

After "The inspector", insert "shall".

Delete "will also".

**Page 2**

**Section 4**

**Line 4**

After "Period.", insert "If".

Delete "When".

**Line 6**

After "handled in", delete "such".

**Line 9**

After "days. The inspector", insert "shall".

Delete "will".

**Line 10**

After "him", insert "or her".

**Line 10-11**

After "within this", insert "time".

Delete "or her".

**Line 11**

After "his or her license", insert "shall".

Delete "will".

After "revoked. The inspector", insert "shall".

Delete "will".

**Page 2**

**Section 5**

**Line 13**

After "Licenses.", insert "If".

Delete "When".

**Line 16**

After "inedible", insert a comma.

Delete the semicolon.



**Page 2**

**Section 6**

**Line 18**

After "with KRS", insert "Chapter".

**Page 2**

**Section 7(1)(a)**

**Line 20**

After the closing quotation marks, insert ", June 2020".

Delete "July 2019".

**Page 2**

**Section 7(1)(b)**

**Line 21**

After the closing quotation marks, insert ", June 2020".

Delete "July 2019;"

**MATERIAL INCORPORATED BY REFERENCE**

**At the time that this agency files this staff suggested amendment, the agency will need to file one (1) clean copy of the "Application for Retail License to Handle Eggs", and one (1) clean copy of the "Application for Wholesale Egg Handler License" that:**

- **Updates the edition date to June 2020**
- **Clarifies the fee amounts and adds statutory citations to where these fee amounts are located in KRS 260.600.**

Ryan F. Quarles  
Commissioner



Corporate Drive  
Complex  
Frankfort, KY 40601  
(502) 573-0282

## Kentucky Department of Agriculture

June 4, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: 302 KAR 22:050. Stockyards

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 22:050 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 22:050.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

Clint Quarles  
Staff Attorney  
Kentucky Department of Agriculture  
107 Corporate Drive  
Frankfort, KY 40601



**SUGGESTED SUBSTITUTE**  
**Final 6/4/2020 1:20 PM**

**DEPARTMENT OF AGRICULTURE**  
**Office of the State Veterinarian**

**302 KAR 22:050. Stockyards.**

RELATES TO: KRS Chapter 257, 261, **9 C.F.R. 71.10, 71.11, 71.12, 71.19, 86**

STATUTORY AUTHORITY: KRS 257.020, 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.020(3) requires the Board of Agriculture to prevent, control, and eradicate any communicable disease of livestock. KRS 257.030(4) authorizes the board to promulgate administrative regulations necessary to administer any provision of KRS Chapter 257. This administrative regulation establishes operational procedures for all stockyards relative to disease control.

Section 1. General Requirements.

(1) All stockyards shall apply annually, on or before July **1[1<sup>st</sup>]**, to the Office of the State Veterinarian (OSV) for a license to operate in accordance with KRS **Chapter** 261, by submitting the form Application for Kentucky Stockyard Approval.

(2) All stockyards shall be maintained in a workable and **[acceptable]** sanitary condition. Stockyards shall be inspected as required by the OSV, **based on sanitation and safety.**

(3) After an occurrence of any infectious, contagious, parasitic, or communicable disease of livestock in a stockyard, exposed facilities capable of transmitting disease shall be cleaned and disinfected according to 9 C.F.R. 71.10, 71.11, and 71.12, and at the direction and under the supervision of the OSV.

(4) Livestock found to be infected and showing clinical or diagnostic symptoms of an infectious, contagious, parasitic, or communicable disease shall, upon recommendation of the market veterinarian or representative of the OSV, be quarantined in an isolated portion of the yards for treatment, additional diagnostic laboratory procedures, disposition to slaughter, or other disposition pursuant to accepted methods of disease prevention and control.

(5) All livestock originating from a quarantined herd or premises shall be sold only with specific written approval from the OSV, for immediate slaughter.

(6) A bill of sale or other document showing **the** number of livestock, purchaser, and **physical description[identifiers required]** shall be given to the purchaser. **The purchaser shall be responsible for providing any necessary documentation required for movement to[and] the entity hauling livestock away from the facility.**

(7) It is the responsibility of the **seller[stockyard]** to document and identify livestock **prior to the sale[exiting the facility]** as if they are moving under 9 C.F.R. 86. This shall include official identification **for [for all dairy cattle of any age, and]** all sexually intact cattle over eighteen (18) months of age, **and dairy heifers. Sellers may elect to have the stockyards perform these requirements at the expense of the seller.**

(8) Stockyards shall submit to the OSV a Stockyards Multipurpose Form within seven (7) calendar days of a sale. Beginning January 1, 2021 the **Stockyards** Multipurpose Form or the contents therein shall be submitted to the OSV electronically as an excel or other importable format.

(9) The person operating a stockyard shall provide separate pens for isolating animals classed as reactors to brucellosis or any contagious, infectious, or communicable disease.

**(a)** The pens shall be permanently identified as isolation or quarantine pens, and these words shall be **legibly and prominently posted[spelled-out]** on the pen gates.

**(b)** The pens shall be constructed so as to facilitate easy cleaning and disinfecting after each use.

**(c)** The pens shall have concrete floors and complete walls with no fences or gates to permit contact with adjacent animals.

**(d)** Any watering troughs or feed bunks in the isolation or quarantine pens shall be located so that no other livestock in the market can access them at any time.

**(e)** All diseased animals shall be yarded in the isolation or quarantine pens and shall be sold last.

**(f)** The animals shall be identified as reactors or diseased animals on the invoices of both the buyer and the seller.

**(g)** The isolation or quarantine pens shall not be used at any time except for known or suspected contagious, infectious, or communicable disease reactors, or diseased animals.

**(h)** Livestock from these pens shall move directly to a recognized slaughter establishment[,r] or to any place that is requested and authorized by the OSV in writing.

**(i)** ~~[Temporary bangs,]~~ Isolation, or quarantine pens may be used if necessary and if prior approval for the use of the pens has been obtained from an agent of the OSV. Temporary pens shall be identified as isolation or quarantine pens as provided in this section.

(10) The owner operating a stockyard shall provide adequate space, utilities, hot water, and assistance for the market veterinarian to carry out the provisions of this administrative regulation. All licensed Kentucky livestock markets shall **comply with this subsection to assist[provide the following requirements for]** the market's official market veterinarian. This space shall:

(a) Be constructed and equipped so as to be maintained at room temperature (normal working temperature) in both summer and winter (i.e., heaters and air conditioners);

(b) Contain a sink with hot and cold running water;

(c) Be equipped with a refrigerator in good working condition;

(d) Be constructed so that the market veterinarian shall have sufficient space and privacy to conduct the required tests and fill out the associated records and forms;

(e) Be constructed so that it can be kept clean easily and locked at all times if not in use;

(f) Contain a work counter and sufficient shelf space, cabinets with locks, and storage space to keep forms, ear tags, and other supplies as required by the official market veterinarian in carrying out his or her duties;

(g) Be supplied with adequate artificial light. The electrical wiring shall be adequate to carry at a minimum a centrifuge, electrical refrigerator, and cooling facility and have at least two (2) additional electrical outlets; and

(h) Be located so as to be convenient for the ***public and the*** veterinarian ~~***[and the public]***~~ while conducting his or her duties as the official market veterinarian.

(9) The owner or operator shall ***provide[furnish]*** and maintain one (1) or more cattle chutes suitable for restraining animals for inspection of any infectious, contagious, or parasitic condition, testing, tagging, branding, and other procedures routinely required in providing livestock sanitary services and identification for movement at stockyards.

#### Section 2. A Stockyard Must Employ a Market Veterinarian.

(1) The owner or manager operating a stockyard shall arrange for an USDA accredited, Kentucky licensed veterinarian, approved by the State Veterinarian, to be available to carry out the provisions of this administrative regulation.

(a) A veterinarian seeking to be designated as an official market veterinarian shall ***submit a completed form[make complete a form]*** Responsibilities of the Market Veterinarian ***form***.

(b) The official market veterinarian shall be responsible ***for providing a replacement[to replace himself with another]*** veterinarian, approved by the State Veterinarian, if he or she finds it necessary to be absent from the market.

(c) The failure or neglect to properly perform any of the responsibilities and duties of the official market veterinarian shall be cause for termination.

(d) The stockyard shall not conduct a sale without an approved official market veterinarian.

Section 3. Veterinary Compensation. The fees shall be deducted from the seller's check or added to the buyer's check, depending upon conditions of sale, and shall be paid to the market veterinarian. Any deductions shall be printed on the sales documents.

Section 4. Veterinary Duties. ~~***[The market veterinarian shall perform the following described duties in cooperation with representatives of the department.]***~~ The market veterinarian, ***in cooperation with a representative from the department,*** shall:

- (1) Be available to inspect livestock to clarify the health status of the animals and to qualify the animals for interstate movement;
- (2) Collect blood and tissue samples and submit samples to a state-federal approved laboratory to qualify animals for movement as required;
- (3) Visually ~~inspect~~**[inspection of]** livestock for clinical signs of a contagious, infectious, or communicable disease prior to the sale;
- (4) Report the presence of any animal showing symptoms suggestive of a reportable disease or any other disease that ~~could~~**[may]** cause animals to become infected or exposed to a communicable livestock disease;
- (5) Forward copies of all forms to the Office of the State Veterinarian. All official forms, certificates, or documents shall be dated and signed by the agent of the market. An official document shall not be presigned by any veterinarian under any circumstance~~u~~**[.]**
- (6) Prevent the transmission of infectious agents to livestock~~;~~ **and****[.]**
- (7) ~~[Shall]~~Not resign market duties without written notice to the sale company and the State Veterinarian's office at least ten (10) days prior to resignation.

Section 5. Records Required. The owner or operator shall maintain records of the seller and purchasers of all livestock for at least five (5) years. ~~[Additionally, The stockyard shall copy and maintain all movement, Certificate of Verterinanry Inspection (CVI), Owner Shipper Statement (OSS) or Official Identification (OID) materials that pertained to any sale or transaction, including animals that were returned to the consignor.]~~ These records shall be made available to OSV representatives for inspection upon request during regular business hours.

#### Section 6. ~~[Cattle and Bison General Requirements.~~

- ~~(1) Cattle and bison may only enter the premises of the stockyard with a valid CVI or an Owner Shipper Statement.~~
- ~~(2) The stockyard shall scan or otherwise record the CVI or OSS at the time of unloading and prior to the sale.~~
- ~~(3) All sexually intact cattle or bison eighteen (18) months of age or older leaving the stockyards, regardless of change of ownership, and all dairy animals, regardless of age, shall have official identification.~~
- ~~(4) Any cattle or bison not receiving OID by owner designation as feeders shall be subject to an on farm inspection by the OSV.~~

~~Section 7.]~~ Swine Requirements. A qualifying stockyard ~~shall~~**[must]** select designation as either an all class swine market~~[,]~~ or a slaughter only market at the time of application.

- (1) All class swine stockyards shall:
  - (a) Maintain well-constructed pens and swine handling facilities that are clean and in good repair;

(b) Provide pens surfaced with impervious material for holding and handling all swine;  
(c) Provide ~~[satisfactory]~~, well-lighted facilities for inspection and proper restraint;  
(d) **Clean and disinfect** handling and holding pens and alleys ~~[shall be cleaned and disinfected]~~ after being used by each lot of swine. ~~[(e)]~~ Procedures for cleaning and disinfecting shall be performed according to 9 C.F.R. 71.10, 71.11, and 71.12. ~~[-]~~

(f) Maintain records of origin and **the buyer[destination]** for all swine entering market and grant federal and state inspectors access to the records. Identification as to farm where farrowed shall be maintained for all feeder pigs and breeding stock and all slaughter swine, which may be diverted for purposes other than slaughter. Records shall be maintained for **at least** five (5) years;

(g) Place feeding and breeding swine in pens separate and apart from slaughter swine. ~~[-]~~

(h) **Deliver sine designated for slaughter** ~~[All swine designated for slaughter shall be delivered]~~ directly to an approved slaughter establishment with no diversion en route. The stockyard shall record the name and information of the slaughter facility destination. ~~[(i)]~~ All swine exiting the stockyard shall require official identification as required in 9 C.F.R. 71.19. The stockyard shall record the owner and premises of destination information; **and** ~~[-]~~

~~(i) [(j)]~~ Not permit feeder pigs or breeding swine to remain in the market more than seventy-two (72) hours.

(2) Slaughter swine stockyards

(a) Swine moving interstate to the stockyard shall be identified in accordance with 9 C.F.R. Part 71.

(b) Slaughter swine stockyards shall maintain well-constructed pens and swine handling facilities that are clean and in good repair. ~~[-]~~

(c) **Slaughter swine stockyards shall** maintain records of origin and destination for all swine entering market and grant federal and state inspectors access to the records. Records shall be maintained **for at leaste** one (5) year. ~~[-]~~

(d) **Slaughter swine stockyards shall** isolate all swine suspected of being affected with or exposed to an infectious disease, promptly notify the state or federal agency, and hold the swine in isolation pending instructions on disposition. ~~[- and]~~

(e) **Slaughter swine stockyards shall** clean and disinfect holding and handling pens, alleys, and other facilities used in selling swine according to 9 C.F.R. 71.10, 71.11, and 71.12.

(f) Swine entering onto the stockyards premises shall be only for slaughter, and swine shall not be permitted to leave the stockyard premises for any purpose other than slaughter.

(g) All swine shall be delivered directly to an approved slaughter establishment with no diversion en route, except for swine designated as farm slaughter. The stockyard shall record the name and information of the slaughter facility destination.

(h) The number of swine purchased for farm slaughter for family consumption only shall not exceed six (6) head of animals per premises within twelve (12) months.

(i) Farm slaughter swine shall not be commingled with other swine on the purchaser's premises.

(j) The purchaser of farm slaughter swine shall document slaughter of animals within seven (7) days of purchase. This record shall be made available to the OSV upon request.

(k) All swine exiting the stockyard shall require official identification as required in 9 C.F.R. 71.19. The stockyard shall record the owner and premises of destination information.

Section **7.[8.]** Sheep and Goat Requirements.

(1) All sheep and goats shall be required to be tagged with an Official Scrapie Tag prior **unloading into**~~[to arrival at]~~ the stockyards facility.

(2) ~~[No Official scrapie tags shall not be affixed at the stockyard facility by any person, including the market veterinarian.]~~

~~(3)]~~ All sheep or goats that are that show evidence of an infectious, contagious, communicable, or parasitic disease shall be moved only with permission of the OSV.

Section **8.[9.]** Horse Requirements. ~~[(1)]~~ All equine **presented** shall require a valid CVI and a negative Equine infectious anemia test prior to entering the stockyards premises.

Section 10. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Application for Kentucky Stockyard Approval", **2020;**

(b) "Stockyards Multipurpose Form", **2020[and]**

(c) "Responsibilities Of The Market Veterinarian", **2020;** and

(d) "Owner-Shipper Statement", **2020.**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.





**KENTUCKY LABOR CABINET**  
**Department of Workplace Standards**

**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

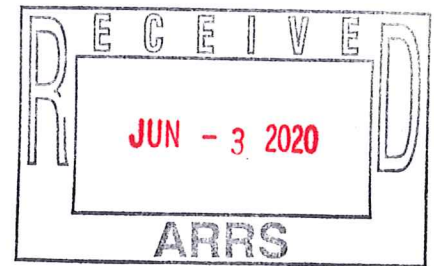
Mayo-Underwood Building  
500 Mero Street, 3<sup>rd</sup> Floor  
Frankfort, KY 40601  
Telephone: (502) 564-3070  
Fax: (502) 696-1984

**Larry L. Roberts**  
Secretary

**Kimberlee C. Perry**  
Commissioner

June 3, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Compiler  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601



Re: 803 KAR 2:180. Recordkeeping, reporting, statistics.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:180 on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:180.

Sincerely,

Robin Maples  
OSH Standards Specialist  
Kentucky Labor Cabinet  
500 Mero Street, 3<sup>rd</sup> Floor  
Frankfort, KY 40601

**Suggested Amendment**  
**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**

**803 KAR 2:180. Recordkeeping, reporting, statistics.**

**Page 1**

**Section 1(2), Section 1(3), and Section 1(2)**

**Lines 18-21**

After "(2)", delete the following:

"Hospitalization" means formal admission to a hospital or clinic for care, treatment, observation, or diagnostic testing.

(3) "Loss of eye" means the physical removal of an eye from the socket.

(2)

**Page 2**

**Section 1(4)**

**Line 2**

After "(4)", insert the following:

"Hospitalization" means formal admission to a hospital or clinic for care, treatment, observation, or diagnostic testing.

(5)

**Page 2**

**Section 1(4) and Section 1(5)**

**Lines 2-3**

After "from the socket.", insert "(6)".

Delete "(5)".

**Page 2**

**Section 1(5)**

**Line 3**

After "Act", and the closing quotation marks, insert "or OSHA".

**Page 2**

**Section 1(5) and Section 1(6)**

**Lines 3-4**

After "Chapter 338.", insert "(7)".

Delete "(6)".

**Page 2**

**Section 1(6) and Section 1(7)**

**Lines 5-6**

After "Cabinet.", insert "(8)".

Delete "(7)".

**Page 2**

**Section 2**

**Line 9**

After "Section 1", insert "of this administrative regulation".

**Lines 9-10**

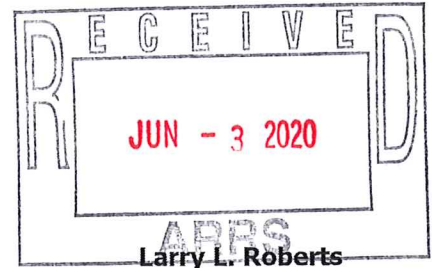
After "requirements of Section", insert "3".

Delete "2".



**KENTUCKY LABOR CABINET**  
**Department of Workplace Standards**

Mayo-Underwood Building  
500 Mero Street, 3<sup>rd</sup> Floor  
Frankfort, KY 40601  
Telephone: (502) 564-3070  
Fax: (502) 696-1984



**Larry L. Roberts**  
Secretary

**Kimberlee C. Perry**  
Commissioner

**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

June 3, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Compiler  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: 803 KAR 2:406. Signs, signals, and barricades.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:406, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:406.

Sincerely,

Robin Maples  
OSH Standards Specialist  
Kentucky Labor Cabinet  
500 Mero Street, 3<sup>rd</sup> Floor  
Frankfort, KY 40601

**Suggested Amendment**  
**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**

**803 KAR 2:406. Signs, signals, and barricades.**

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 9**

After "338.051(3)", insert "requires".  
Delete "authorizes".

**Page 2**

**Section 1(3)**

**Line 1**

After "Secretary", delete "of Labor".  
After comma immediately following, delete "Kentucky".  
After "Labor Cabinet", insert a comma.

**Page 2**

**Section 2**

**Line 5**

After "modified by", insert "the definitions in".

**Page 2**

**Section 2(1)**

**Line 8**

After "1926.203;", delete "and".

**Page 2**

**Section 2(2)**

**Line 11**

After "Number 215", insert "; and".  
Delete the period.

**Page 2**

**Section 2(3)**

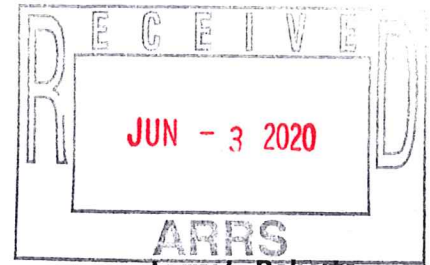
**Line 12**

After "1926.200-", insert "1926.".



**KENTUCKY LABOR CABINET**  
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500 Mero Street, 3<sup>rd</sup> Floor  
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**Larry L. Roberts**  
Secretary

**Kimberlee C. Perry**  
Commissioner

**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

June 3, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Compiler  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: 803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:418 on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:418.

Sincerely,

Robin Maples  
OSH Standards Specialist  
Kentucky Labor Cabinet  
500 Mero Street, 3<sup>rd</sup> Floor  
Frankfort, KY 40601

**Suggested Amendment**  
**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**

**803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.**

**Page 1**

**RELATES TO**

**Lines 7-8**

After "and", insert "1926 Subpart S,".

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 15**

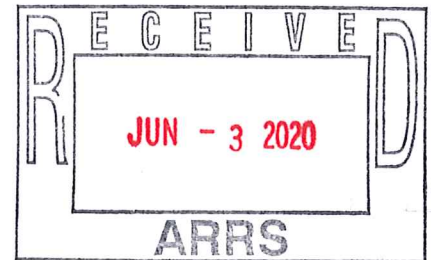
After "-1926.804 and", insert "1926".

After "Subpart S", insert a comma.



**KENTUCKY LABOR CABINET**  
**Department of Workplace Standards**

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500 Mero Street, 3<sup>rd</sup> Floor  
Frankfort, KY 40601  
Telephone: (502) 564-3070  
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**Andy Beshear**  
Governor

**Jacqueline Coleman**  
Lieutenant Governor

**Larry L. Roberts**  
Secretary

**Kimberlee C. Perry**  
Commissioner

June 3, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill, Regulation Compiler  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: 803 KAR 2:425. Toxic and hazardous substances.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:425 on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:425.

Sincerely,

Robin Maples  
OSH Standards Specialist  
Kentucky Labor Cabinet  
500 Mero Street, 3<sup>rd</sup> Floor  
Frankfort, KY 40601



**Suggested Amendment**  
**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**

**803 KAR 2:425. Toxic and hazardous substances.**

**Page 1**

**Section 1(2)**

**Line 18**

After "Labor Cabinet", insert a comma.

**Page 2**

**Section 2**

**Lines 10-11**

After "Section 1 of this administrative regulation," delete the following:  
or as provided under Section 3 of this administrative regulation,



ANDY BESHEAR  
GOVERNOR

JONATHAN RABINOWITZ  
CHAIRMAN

KERRY B. HARVEY  
SECRETARY

MARC A. GUILFOIL  
EXECUTIVE DIRECTOR

PUBLIC PROTECTION CABINET  
KENTUCKY HORSE RACING COMMISSION  
ESTABLISHED 1906  
4063 IRON WORKS PKWY., BLDG. B  
LEXINGTON, KENTUCKY 40511  
TELEPHONE: (859) 246-2040 FAX: (859) 246-2039  
WEBSITE: [HTTP://KHRC.KY.GOV](http://KHRC.KY.GOV)

June 5, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: Chapter 810 regulations, including:  
810 KAR 1:001: Definitions  
810 KAR 2:001: Definitions

810 KAR 4:030: Entries, subscriptions, declarations (Thoroughbred)  
810 KAR 5:001: Definitions  
810 KAR 5:070: Running of the Race  
810 KAR 7:040: Kentucky Standardbred Development Fund and Kentucky Standardbred  
Breeders' Incentive Fund

Dear Co-Chairs West and Hale:

After detailed discussions with Administrative Regulation Review Subcommittee staff of the issues raised by the above-captioned regulations, the Kentucky Horse Racing Commission proposes the attached amendments to those regulations. We appreciate your time and attention to these proposed amendments.

Very truly yours,



Jennifer Wolsing, General Counsel  
Kentucky Horse Racing Commission

**SUGGESTED SUBSTITUTE**

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission**

**810 KAR 1:001. Definitions for 810 KAR Chapter 1.**

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215~~(2)~~, 230.225(5), 230.260~~(8)~~, 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) ~~authorizes~~~~[grants]~~ the Kentucky Horse Racing Commission ~~[the authority]~~ to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) ~~authorizes~~~~[grants]~~ the commission ~~[the authority]~~ to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter 1.

Section 1. Definitions. (1) "Added money" means cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to 810 KAR Chapter 1.

(4) "Association" is defined by KRS 230.210~~(5)~~~~[(4)]~~.

(5) "Authorized agent" means any person currently licensed as an agent for a licensed owner or jockey by virtue of notarized appointment of agency filed with the commission.

(6) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in a mutuel field, on which a single pari-mutuel wager may be placed.

(7) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(8) "Breakage" means the net pool minus payout.

(9) "Breeder" means the owner of the dam of a horse when the horse was foaled. A horse is "bred" at the place of its foaling.

(10) "Calendar days" means consecutive days counted irrespective of number of racing days.

(11) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 810 KAR **6:020**~~[Chapter 1]~~.

(12) "Claiming race" means any race in which every horse running in the race may be transferred in conformity with 810 KAR **4:050**~~[Chapter 1]~~.

(13) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(14) "Commission" means:

(a) The Kentucky Horse Racing Commission [~~formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)~~] if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and

(b) If used in the context of pari-mutuel wagering, the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615.

(15) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(16) "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(17) "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR Chapter 1.]

(18) "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on an historical horse race.

(19) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or **KAR Title 810 or Title 811**~~[KAR Chapter 1]~~ and can include:

- (a) Refusal to issue or renew a license;
- (b) Revocation or suspension of a license;
- (c) Imposition of probationary conditions on a license;
- (d) Issuance of a written reprimand or admonishment;
- (e) Imposition of fines or penalties;
- (f) Denial of purse money;
- (g) Forfeiture of purse money; or
- (h) Any combination of paragraphs (a) through (g) of this subsection.

(20) "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(21) "Entry" means the act of nominating a horse for a race in conformance with **KAR Title 810**~~[KAR Chapter 1]~~.

(22) "Equipment" means accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(23) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.

(24) "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race other than a win, place, or show wager placed on a live horse race.

(25) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that[which] is not a mutuel entry.

(26) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(27) "Free handicap" means a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting in the race.

(28) "Handicap race" means a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(29) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(30) "Historical horse race" means any horse race that:

(a) Was previously run at a licensed pari-mutuel facility located in the United States;

(b) Concluded with official results; and

(c) Concluded without scratches, disqualifications, or dead-heat finishes.

(31) "Horse" means a thoroughbred registered with The Jockey Club irrespective of age or sex designation.

(32) "Ineligible" means a horse or person not qualified under 810 KAR Chapter 1 or conditions of a race to participate in a specified racing activity.

(33) "Initial seed pool" means a nonrefundable pool of money funded by an association in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race.

(34) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(35) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(36) "Licensed premises" means:

(a) The location and physical plant described in response to question P of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in 2010;

~~(b) Licensed premises may also include~~ Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted; or

(c) One (1) facility or real property that is:

1. Owned, leased, or purchased by a licensed association within a sixty (60) mile radius of **the association's track but not contiguous to track premises, upon commission approval; and**

2. For purposes of paragraphs (b) and (c) of this subsection, is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track of simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

(37) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(38) "Maiden" means a horse which has never won a race on the flat at a recognized meeting in any country. A maiden which was disqualified after finishing first remains a maiden. Race conditions referring to maidens shall be interpreted as meaning maidens at the time of starting.

(39) "Match race" means a race between two (2) horses for which no other horses are eligible.

(40) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing **that:**

**(a) Begins[~~-A meeting shall begin~~] at 10 a.m. of the first racing day; and**

**(b) Extends[~~and extend~~] through a period ending one (1) hour after the last scheduled race of the last day.**

(41) "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the amount of money contained in the net pool.

(42) "Month" means calendar month.

(43) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(44) "Net pool" means the total amount wagered less refundable wagers and takeout.

(45) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(46) "Nominator" means the person in whose name a horse is entered for a race.

(47) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(48) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(49) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(50) "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(51) "Place," if used in the context of a single position in the order of finish in a race, means second; if used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest which finished first or second in a race; if used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first or second.

(52) "Post" means the starting point of a race.

(53) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(54) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(55) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(56) "Purse" means the gross cash portion of the prize for which a race is run.

(57) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(58) "Race" means a running contest between thoroughbreds, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(59) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(60) "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(61) "Recognized meeting" means any meeting with regularly scheduled live horse races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with The Jockey Club and whose race records can be provided to an association by The Jockey Club.

(62) "Registration certificate" means:

(a) The document issued by The Jockey Club certifying the name, age, color, sex, pedigree, and breeder of a horse as registered by number with The Jockey Club; or

(b) The document known as a "racing permit" issued by The Jockey Club in lieu of a registration certificate if a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(63) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(64) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(65) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810~~[KAR Chapter 1]~~.

(66) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(67) "Secretary" means the duly appointed and currently serving secretary of the commission.

(68) "Seed pool" means a pool of money funded by patrons wagering on an historical horse race that is used to ensure that all patrons are paid the minimum payout on winning wagers.

(69) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(70) "Stakes" means all fees:

(a) Paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race; and

(b)~~[- These fees shall be]~~ Included in the purse.

(71) "Stakes race" means a race ~~that~~[which] closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of \$50,000 or more without payment of stakes. With the exception of stakes races in North America, "stakes race" shall exclude races not listed by The Jockey Club Information System International Cataloguing Standards, Part One (1).

**(72) "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.**

~~(73)~~[(72)] "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR ~~2:040~~[1:004] serving at a current meeting in the Commonwealth.

~~[(73) "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.]~~

(74) "Subscription" means nomination or entry of a horse in a stakes race.

(75) "Takeout" means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and 810 KAR Chapter 1.

(76) "Terminal" means any self-service totalizator machine or other mechanical equipment used by a patron to place a pari-mutuel wager on a live or historical horse race.

(77) "Thoroughbred racing" is defined by KRS 230.210~~(21)~~[(3)].

(78) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(79) "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.



(80) "Walkover" means a race in which the only starter or all starters represent single ownership.

(81) "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

(82) "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(83) "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as set out in 810 KAR ~~4:020[1:014(12)]~~.

(84) "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(85) "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. ~~If~~***[In the event that]*** any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

FRANKLIN S. KLING, JR., Chairman

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov).

**SUGGESTED SUBSTITUTE**

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission**

**810 KAR 2:001. Definitions for 810 KAR Chapter 2.**

RELATES TO: **KRS Chapter 230**~~[810 KAR Chapter 2]~~

STATUTORY AUTHORITY: KRS 230.215~~(2)~~, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the **Kentucky Horse Racing** Commission to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 2.

Section 1. Definitions.

(1) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(2) "Arrears" means sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, driver fees, forfeitures, and any default incident to KAR Title 810.

(3) "Association" is defined by KRS 230.210(5).

(4) "Authorized agent" means in flat racing a person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(5) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with ~~[811 KAR 4:050]~~ **810 KAR 4:050** and 810 KAR 5:030.

(6) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(7) "Commission" means:

(a) The Kentucky Horse Racing Commission ~~[(formerly known as the Kentucky Horse Racing Authority and defined in KRS 138.511(4))]~~ if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(8) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(9) "Dash" means in standardbred racing a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse starts in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded exceeds the number of starters in the dash.

(10) "Day" means a twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(11) "Declaration" means:

(a) In flat racing, the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with ~~[KAR Title]~~ 810 **KAR Chapter 4**; or.

(b) In standardbred racing, the naming of a particular horse as a starter in a particular race.

(12) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

- (a) Refusal to issue or renew a license;
- (b) Revocation or suspension of a license;
- (c) Imposition of probationary conditions on a license;
- (d) Issuance of a written reprimand or admonishment;
- (e) Imposition of fines or penalties;
- (f) Denial of purse money; or
- (g) Forfeiture of purse money.

(13) "Disqualification" means a ruling of the stewards, judges, or the commission revising the order of finish of a race.

(14) "Draw" means the process of determining post positions by lot.

(15) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(16) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(17) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(18) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes riding crop, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(19) "Extended pari-mutuel meeting" means in standardbred racing a meeting or series of meetings, at which no agriculture fair is in progress, with an annual total of more than six (6) days duration and during which pari-mutuel wagering is permitted.

(20) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse **that[which]** is not a mutuel entry.

(21) "Foul" means an action by a jockey or driver that tends to hinder another jockey or a horse in the proper running of the race.

(22) "Handicap" means in standardbred racing a race in which allowances are made according to a horse's:

- (a) Age;
- (b) Sex;
- (c) Claiming price; or
- (d) Performance.

(23) "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(24) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(25) "Horse" means an equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(26) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.

(27) "Inquiry" means an investigation by the stewards or judges of a contest prior to declaring the result of the contest official.

(28) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(29) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(30) "Licensed premises" means:

(a) The location and physical plant described in response to question R of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in the following year;

(b) ~~[- Licensed premises may also include]~~ Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted;  
or

(c) One (1) facility or real property that is:

1. Owned, leased, or purchased by a licensed association within a sixty (60) mile radius of **the [such]** association's track but not contiguous to track premises, upon commission approval; and

2. ~~[provided that]~~ For purposes of **paragraphs[subsections]** (b) and (c) **of this subsection, [such property]** is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

(31) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(32) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing **that:**

**(a) Begins**~~[A meeting shall begin]~~ at 10 a.m. of the first racing day; and

**(b) Extends**~~[extend]~~ through a period ending one (1) hour after the last scheduled race of the last day.

(33) "Month" means calendar month.

(34) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(35) "Nominator" means the person in whose name a horse is entered for a stakes race.

(36) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(37) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards or judges.

(38) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(39) "Owner" means a person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(40) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(41) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(42) "Post" means the starting point of a race.

(43) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(44) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(45) **"Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.**

**(46)** "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, would exclude that horse or driver from racing.

**[~~(46)~~ "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.]**

(47) "Purse" means the gross cash portion of the prize for which a race is run.

(48) "Race" means a running contest between horses, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(49) "Race day" means a period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(50) "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(51) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(52) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(53) "Rulings" means determinations, decisions, or orders of the stewards, judges, or of the commission duly issued in writing and posted.

(54) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.

(55) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(56) "Simulcasting" is defined by KRS 230.210(19).

(57) "Starter" means:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(58) "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(59) "Subscription" means nomination or entry of a horse in a stakes race.

(60) "Suspended" means withdrawal by the steward, judge, or commission of racing privileges.

(61) "Thoroughbred racing" is defined by KRS 230.210(21).

(62) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(63) "Year" means twelve (12) consecutive months beginning with January and ending with December.

FRANKLIN S. KLING, JR., Chairman

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020

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**Suggested Amendment  
Public Protection Cabinet  
Kentucky Horse Racing Commission**

**(Amended After Comments version)**

**810 KAR 4:030. Entries, subscriptions, and declarations.**

**Page 3**

**Section 3(10)**

**Line 18**

After "record for", insert "the".

Delete "such".

**Page 11**

**Section 17(1)**

**Line 16**

After "exception in", insert "subsection".

Delete "paragraph".

**Page 12**

**Section 17(4)**

**Lines 7-8**

After "this section,", insert "if".

Delete "provided that".

**Page 12**

**Section 17(4)(a)**

**Line 9**

After "(a)", capitalize "on".

After "entered", insert semicolon.

Delete comma.

**Page 12**

**Section 17(4)(b)**

**Line 10**

After "(b)", capitalize "prior".

**Suggested Amendment  
Public Protection Cabinet  
Kentucky Horse Racing Commission**

**810 KAR 5:001. Definitions.**

**Page 1**

**TITLE**

After "Definitions", insert the following:  
for 810 KAR Chapter 5

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 7**

After "230.215(2)", insert the following:  
authorizes the Kentucky Horse Racing Commission to promulgate  
administrative regulations establishing

Delete the following:  
grants the commission the authority to regulate

**Line 9**

After "230.260(8)", insert "authorizes".  
Delete "grants".  
After "commission", delete "the authority".  
After "to", insert "promulgate".  
Delete "prescribe".

**Line 10**

After "regulations", insert "establishing".  
Delete "and".

**Page 4**

**Section 1(25)**

**Line 15**

After "horse", insert "that".  
Delete "which".

**Page 6**

**Section 1(36)(c)**

**Lines 1-7**

After "(c)", insert the following:  
One (1) facility or real property that is:



1. Owned, leased, or purchased by a licensed association within a sixty (60) mile radius of the association's track but not contiguous to track premises, upon commission approval; and
2. For purposes of paragraphs (b) and (c) of this subsection, is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

Delete the remainder of paragraph (c) in its entirety.

**Page 6**

**Section 1(38)**

**Line 12**

After "live horse racing ", insert "that: (a) Begins".

Delete "beginning".

**Line 13**

After "racing day", insert semicolon.

After "and", insert "(b) Extends".

Delete "extending".

**Page 9**

**Section 1(66)**

**Line 11**

After "all fees", insert ": (a)".

Capitalize "paid".

**Line 12**

After "of the race", insert "; and (b)".

Delete the following:

, with the fees to be

Capitalize "included".

**SUGGESTED SUBSTITUTE**

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission**

**810 KAR 5:070. Running of the race.**

RELATES TO: KRS Chapter 13B, 230.215, 230.260(1), 230.280, 230.290(2), (3), 230.300, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.320(1), 230.361(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.320(1) authorizes the commission to promulgate administrative regulations setting out the conditions under which licenses may be denied, revoked, or suspended. KRS 230.361(1) requires[authorizes] the commission to promulgate regulations concerning the pari-mutuel wagering system. This administrative regulation establishes track rules and requirements concerning proper racing conduct, the starting and timing of races, placing, money distribution, post time and postponements, and protests.

Section 1. Driving Violations. A leading horse shall be entitled to any part of the track. After selecting a position in the home stretch, a driver of a horse shall not:

(1) Change either to the right or left during any part of the race if another horse is so near the driver that in altering positions, the driver:

(a) [The driver] Compels the horse behind to shorten strides; or

(b) Causes the driver of any other horse to pull the horse out of his stride;

(2) Jostle, strike, hook wheels, or interfere with another horse or driver;

(3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers;

(4) Swerve in and out or pull up quickly;

(5) Crowd a horse or driver by "putting a wheel under him";

(6) "Carry a horse out" or "sit down in front of him", take up abruptly in front of other horses so as to cause confusion or interference among the trailing horses, or do any other act that constitutes "helping";

(7) Allow a horse to pass inside needlessly or otherwise help another horse to improve its position in the race;

(8) Lay off a normal pace and leave a hole if it is well within the horse's capacity to keep the hole closed;

(9) Commit an act **that[which]** impedes the progress of another horse or causes the horse to "break";

(10) Change course after selecting a position in the home stretch and swerve in or out, or bear in or out, in a manner **that[which]** interferes with another horse or causes the horse to change course or take back;

(11) Drive in a careless or reckless manner or fail to maintain reasonable control of the horse at all times during the race;

(12) Whip under the arch of the sulky;

(13) Cross the inside limits of the course;

(14) Fail to set or maintain a pace comparable to the class being raced, including traveling an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race; or

(15) Kick a horse. Removal of a foot from the stirrups in and of itself shall not constitute the act of kicking.

#### Section 2. Leaving the Course.

(1) A horse or a horse's sulky that leaves the course by brushing, running over, or going inside of a pylon demarcation shall have violated this administrative regulation and may be penalized by a disqualification if in the opinion of the judges:

(a) The action results in the horse gaining an unfair advantage over other horses in the race;

(b) The action helps the horse improve its position in the race; or

(c) The driver goes inside the pylons and does not immediately correct position.

(2) A horse using the inside to pass shall have complete clearance of the pylons.

(3) A driver striking pylons but not gaining an unfair advantage shall be cited for a violation of this administrative regulation unless he was forced to strike the pylons by circumstances beyond his control.

(4) If an act of interference causes a horse or part of a horse's sulky to be in violation of this administrative regulation and the horse is disqualified, the offending horse shall be placed behind the horse with which it interfered.

#### Section 3. Penalties.

(1) A horse that violates Section 1 or 2 of this administrative regulation shall:

(a) Be placed back one (1) or more positions in the heat or dash behind the horse with which the horse interfered;

(b) Be disqualified from receiving any winnings, if a horse is prevented from finishing as a result of the violation; or

(c) Be placed last among finishing horses, if a horse which the violating horse interfered with fails to finish the race due to a separate and unrelated incident.

(2) If a violation **established**~~[set forth]~~ in Section 1 or 2 of this administrative regulation is committed by a person driving a horse coupled as an entry in the betting, the judges shall set both horses back, if the judges determine that the violation may have affected the finish of the race. Otherwise, penalties shall be applied individually to the drivers of any entry.

#### Section 4. Complaints, Reports of Interference.

##### (1) Complaints.

(a) A complaint by a driver relating to driving or other misconduct during a heat shall be made at the termination of the heat, unless the driver is prevented from doing so by an accident or injury.

(b) A driver desiring to enter a claim of foul or other complaint of violation of the rules shall, before dismounting, indicate to the judges the driver's intention to enter a claim or complaint, and immediately upon dismounting, the driver shall proceed to the telephone or judges' stand where the claim, objection, or complaint shall be immediately entered.

(c) The judges shall not cause the official sign to be displayed until the claim, objection, or complaint has been entered and considered.

(2) Report of interference. A driver shall report to the designated official any interference to himself or herself or to the driver's horse by another horse or driver during a race.

#### Section 5. Unsatisfactory Drive; Fraud.

(1) A heat in a race shall be fairly contested by each horse in the race, and each horse shall be driven to the finish.

(2) A horse shall not be driven:

(a) With design to prevent the horse from winning a heat or dash which the horse was evidently able to win;

(b) In an inconsistent manner with the intent to improperly manipulate the outcome of a race;  
or

(c) To perpetrate or to aid in a fraud.

(3) The judges shall substitute a competent and reliable driver at any time prior to the start of the heat or race if the judges have reason to doubt the competence or reliability of the original driver.

Section 6. Removal and Substitution of Driver. A driver may be removed and another driver substituted after the positions have been assigned in a race if, in the opinion of the judges, a driver:

(1) Is unfit or incompetent to drive;

- (2) Refuses to comply with the directions of the judges; or
- (3) Is reckless in his or her conduct and endangers the safety of horses or other drivers in the race.

Section 7. Failure to Finish. If, for any cause other than being interfered with or broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled "did not finish."

Section 8. Disruptive Conduct.

- (1) A driver shall not engage in disruptive or distracting, improper conduct during a race.
- (2) A driver may remove a foot from the stirrup temporarily for the purpose of pulling earplugs.

Section 9. Whipping.

(1) A driver may have a whip that does not exceed four (4) feet with a snapper not longer than six (6) inches.

(2) Except for the ordinary whip or crop, a person shall not use any goading device, chain or mechanical device, or appliance upon a horse in any race, training exercise, or while on association grounds.

(3) (a) A whip or crop shall not be used in a brutal, excessive, or indiscriminate manner during a race, training exercise, or while on association grounds.

(b) A driver shall use a whip only in the conventional manner, by holding the handle and whipping the horse only above the shafts with wrist and elbow movement only. Full swings or going behind the head is prohibited.

(c) Welts, cuts, or whip marks on a horse resulting from whipping shall constitute a prima facie violation of this section.

(d) A driver shall not:

- 1. Whip a horse under the arch or shafts of the sulky;
- 2. Kick a horse;
- 3. Punch a horse;
- 4. Jab a horse;
- 5. Use the whip so as to interfere with or cause disturbance to any other horse or driver in a race;
- 6. Whip a horse after a race; or
- 7. Whip a horse that is exhausted or no longer in contention to win the race.

(4) A driver shall keep a line in each hand and both hands shall stay in front of the body of the driver from the start of the race until the finish of the race. The left line shall be held in the left hand and the right line shall be held in the right hand.

Section 10. Hopples.

- (1) A horse shall not wear hopples in a race unless it has qualified in hopples.

- (2) Having so started, the horse shall continue to wear them to the finish of the race.
- (3) A person shall not remove or alter a horse's hobbles during a race, or between races, for the purpose of fraud.
- (4) A horse habitually wearing hobbles shall not start in a race without them unless:
  - (a) The horse performs satisfactorily in a qualifying race; or
  - (b) The presiding judge excuses the horse from performing in a qualifying race.
- (5) A horse habitually racing free-legged shall not wear hobbles in a race unless:
  - (a) The horse performs satisfactorily in a qualifying race; or
  - (b) The presiding judge excuses the horse from performing in a qualifying race.
- (6) A horse shall not wear a head pole protruding beyond its nose.

#### Section 11. Breaking.

- (1) If a horse breaks from its gait in trotting or pacing, the driver shall at once, if clearance exists, take the horse to the outside and pull it to its gait.
- (2) A driver shall not:
  - (a) Fail to properly attempt to pull the horse to its gait;
  - (b) Fail to take to the outside or inside if clearance exists;
  - (c) Fail to lose ground by the break; or
  - (d) Fail to prevent extended break.
- (3) If there has been no failure on the part of the driver in complying with subsection (2) of this section, the horse shall not be set back unless a contending horse on its gait is lapped on the hind quarter of the breaking horse at the finish.
- (4) A driver shall not allow a horse to break for the purpose of fraudulently losing a heat.
- (5) If a horse or driver's actions cause another horse to be off-stride at the wire, the offending horse shall be placed behind the horse with whom it interfered after all other placements have been made.
- (6) A horse making a break, which causes interference with other contesting horses, shall be placed behind all offended horses.
- (7) The judges shall set a horse back one (1) or more places if this section is violated.

Section 12. Breaks. One (1) of the judges shall call out every break made, and the clerk shall at once note the break and its character in writing.

Section 13. Time Between Heats and Races. The time between separate heats of a single race shall be no less than forty (40) minutes. A heat shall not be called after sunset if the track is not lighted for night racing. The time between races shall not exceed thirty (30) minutes.

#### Section 14. Accidents.

(1) If any horse in the current program falls, runs uncontrollably on the track, or is involved in an accident after starting to warm up, that horse shall be permitted to start only after examination and approval by the commission veterinarian.

(2) If an accident occurs, the judges shall allow adequate time in between posts to clear the track. A driver involved in an accident shall be cleared by an emergency medical technician or paramedic before resuming driving engagements.

#### Section 15. Sulkies.

(1) A driver shall be seated in his sulky at the finish of the race or the horse shall be placed as not finishing.

(2) The owner and trainer shall provide every sulky used in a race with uncolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the commission. If necessary, the presiding judge may order the use of mud guards to be provided by the owners or trainers.

(3) A sulky shall not be used in a race unless it meets the requirements of the rules and regulations of the United States Trotting Association, 2018, Rule 18, Section 25, "Sulky Performance Standards".

Section 16. Helmets. A protective helmet, securely fastened under the chin and meeting the Snell **Memorial** Foundation 2000 Standard for Protective Headgear for Use in Harness Racing, shall be worn at all times on the premises of an association while:

- (1) Racing, parading, or warming up a horse prior to racing; or
- (2) Jogging, training, or exercising a horse at any time.

Section 17. Safety Vests. A safety vest shall be worn while racing, parading, or warming up a horse prior to racing.

#### Section 18. A licensee shall not:

(1) Refuse to comply with an order or ruling of a member or employee of the commission, a racing official, or judge;

(2) Interfere with the performance of the duty of a person specified in subsection (1) of this section;

(3) Threaten, strike, or harass an owner, trainer, driver or attendant of a horse, or an employee of the association or commission;

(4) Sexually harass an owner, trainer, driver or attendant of a horse, or an employee of the association or commission; or

(5) Use force or intimidation against an owner, trainer, driver or attendant of a horse, or an employee of the association or commission.

Section 19. (1) A person or association shall not offer any money, benefit, or other inducement to any licensee, employee of the commission, or officer of a racing association to affect the entries to a race, the running of a race, or the outcome of a race.

(2) Any action prohibited by subsection (1) of this section shall be immediately reported to the judges who shall promptly inform the racing association and the commission.

Section 20. (1) An owner, trainer, agent, or driver of a horse shall not threaten or join with others in threatening not to race, or not to declare in, because of the entry of a certain horse or a particular stable, thereby compelling or attempting to compel the racing secretary to reject an eligible entry.

(2) An action prohibited by subsection (1) of this section shall be immediately reported to the commission.

Section 21. An owner, agent, or driver who has entered a horse shall not demand of the association a bonus of money or other special award or consideration as a condition for starting the horse.

Section 22. Wagering.

(1) A driver shall not place a wager, or cause a wager to be placed on his or her behalf, or accept a ticket or winnings from a wager on a race, except:

- (a) A race on the horse he is driving; and
- (b) Through the owner or trainer of the horse he is driving.

(2) An owner or trainer who places a wager for his driver shall:

- (a) Maintain a complete record of the wager; and
- (b) Make the record available for examination by the judges upon request.

Section 23. Duty to Report Fraudulent Proposal. A person shall immediately report to the presiding judge the details of an offer, promise, or request for a bribe or wager intended to affect the outcome of a race.

Section 24. Denerving.

(1) A horse that has had a chemical, surgical, or thermal neurectomy at or above the fetlock shall not be permitted to race.

(2) A horse that has had a palmar or plantar digital neurectomy may be permitted to race if:

- (a) The neurectomy has been reported by the trainer to the stewards; and
- (b) The horse has been approved for racing by the commission veterinarian prior to being entered to race.



(3) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, virtual certificate, racing permit, and entry in the electronic registration system. Responsibility for ensuring that the neurectomy is correctly noted on the horse's registration certificate, virtual certificate, racing permit, and entry in the electronic registration system shall fall:

(a) Jointly on the practicing veterinarian who performed the operation and the trainer of the denerved horse if the neurectomy was performed at a location under the commission's jurisdiction; and

(b) Solely on the owner of the denerved horse if the neurectomy was performed at a location not under the commission's jurisdiction.

(4) If a horse races in violation of this section and participates in the purse distribution, a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this section and is claimed, a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting that the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be made publicly available.

Section 25. Spayed Mares. If a mare has been spayed:

(1) It shall be noted on the:

(a) Registration certificate;

(b) Electronic eligibility certificate; and

(c) Program when the mare races; and

(2) The owner shall:

(a) Notify the United States Trotting Association that the mare has been spayed; and

(b) Return the mare's papers to the United States Trotting Association for correction.

Section 26. Starting Gate.

(1) Starter's control. The starter shall have control of the horses from the formation of the parade until the word, "go", is given.

(2) Before or during the parade, the starter shall inform the drivers of the number of scores permitted. After one (1) or two (2) preliminary warming up scores, the starter shall notify the drivers to proceed to the starting gate.

(3) A horse shall not be brought to the starting gate nearer than one eighth (1/8) of a mile before the start, if the length of the stretch permits.

(4) On a mile track, a horse shall be brought to the starting gate at the head of the stretch.

(5) The starting point shall be a point on the inside rail a distance of at least 200 feet from the first turn. The starter shall give the word "go" at the starting point.

(6) When a speed has been reached in the course of a start there shall not be a[no] decrease except in the case of a recall.

(7) If a recall is necessary, a light plainly visible to the driver shall be flashed and a recall sounded and, if possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. The starter may close the wings of the gate if an emergency situation arises.

(8) There shall not be a[no] recall after the word "go" has been given and any horse, regardless of position or accident, shall be considered a starter from the time the horse enters into the starter's control, unless dismissed by the starter or judges pursuant to subsection (10) of this section.

(9) The starter shall endeavor to start all horses in position and on gait, but a recall shall not be sounded for a breaking horse.

(10) The starter may sound a recall only for the following reasons, if the starter believes the integrity of the race may be jeopardized:

- (a) A horse scores ahead of the gate;
- (b) There is interference;
- (c) A horse has broken equipment;
- (d) A horse falls before the word "go" is given;
- (e) There is a malfunction of the starting gate;
- (f) A horse comes to the gate out of position; or
- (g) A circumstance arises that[which] will not allow a fair start, as determined by the starter.

(11) A driver shall not:

- (a) Delay the start;
- (b) Fail to obey the starter's instructions;
- (c) Rush ahead of the inside or outside wing of the gate;
- (d) Come to the starting gate out of position;
- (e) Cross over before reaching the starting point;
- (f) Interfere with another driver during the start; or
- (g) Fail to come up into position.

(12) Unless granted permission by the presiding judge, a person other than the starter, or the starter's driver or operator, shall not be allowed to ride in the starting gate.

(13) Use of a mechanical loudspeaker for any purpose other than to give instructions to drivers shall be prohibited. The volume shall not be higher than necessary to carry the voice of the starter to the drivers.

#### Section 27. Holding Horses Before Start.

(1) A horse shall not be held on the backstretch for more than three (3) minutes awaiting post time, except if delayed by an emergency or by permission of the judges.

(2) Post time **shall[must]** be posted no later than two (2) minutes following a previous race with the exception of mutuel malfunction.

(3) Horses **shall[may]** not be held on the track more than ten (10) minutes unless permission is granted by the Presiding Judge.

#### Section 28. Two (2) Tiers.

(1) If there are two (2) tiers of horses, the withdrawal of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier.

(2)(a) If a horse is drawn from any tier, horses on the outside shall fill the vacancy.

(b) If a horse has drawn a post position in the second tier, the driver of the horse may elect to score out behind any horse in the first tier, if the driver does not interfere with another trailing horse or deprive another trailing horse of a drawn position.

#### Section 29. Starters.

(1) A horse shall be considered to have started when the word, "go", is given by the starter, and a horse shall be required to complete the course except in case of accident, broken equipment, or other circumstance which, in the opinion of the judges, makes it impossible or unsafe to complete the course.

(2) For the purpose of declaring a horse a nonstarter, the judges shall consider the actual starting point on the track regardless if there was a start.

#### Section 30. Unmanageable Horse.

(1) If, in the opinion of the judges or the starter, a horse is unmanageable or may cause accidents or injury to another horse or to any driver, it shall be scratched. The starter shall notify the judges of the scratch, who shall then notify the public.

(2) A horse shall be considered unmanageable if it causes two (2) recalls in the same dash or heat, in which case it shall be scratched.

Section 31. Bad Acting Horse. At a meeting where there is no wagering, the starter may place a bad acting horse on the outside. At a pari-mutuel meeting, this action may be taken only if there is time for the starter to notify the judges, who shall in turn notify the public prior to the sale of tickets for the race. If tickets have been sold, the bad acting horse shall be scratched under the provisions of Section 30 of this administrative regulation.

Section 32. Post Positions; Heat Racing. The horse winning a heat shall take the pole (or inside position) in the succeeding heat, unless otherwise specified in the published conditions, and all others shall take their positions in the order they were placed in the last heat. If two (2) or more horses finish in a dead heat, their positions shall be settled by lot.

Section 33. Shield. The arms of a starting gate shall be provided with a screen or a shield in front of the position for each horse, and the arms shall be perpendicular to the rail.

Section 34. Unfair Advantage Prior to Start. If a horse comes to the gate out of its assigned post position and gains an unfair advantage by moving either to the left or right to its assigned post position before the starter gives the word, "go," that horse shall be disqualified and placed by the judges.

Section 35. Malfunction of the Gate. A licensed starter shall check the starting gate for malfunctions before commencing a meeting and shall practice the measures to be followed if there is a malfunction. Both the starter and the driver of the gate shall know and practice emergency measures, and the starter shall be responsible for the training of drivers in taking emergency measures.

Section 36. Timing Races. The time of a heat shall be taken by:

- (1) One electronic timing device; and
- (2) One hand-held timing device.

Section 37. Track Measurement Certificate. An association shall file with the commission a certificate from a duly licensed civil engineer or land surveyor attesting that the track has been measured from wire to wire three (3) feet out from the pole or inside hub rail, and certifying in linear feet the result of the measurement. If there is a change or relocation of the hub rail, the track shall be measured and recertified.

Section 38. Time for Lapped on Break. The leading horse shall be timed and his time only shall be announced. A horse shall not obtain a win race record by reason of the disqualification of another horse unless the horse's actual race time can be determined by photo finish or electronic timing.

Section 39. Time for Dead Heat. **If there is**~~[In case of]~~ a dead heat, the time shall constitute a record for the horses making a dead heat and both shall be considered winners.

Section 40. Timing Procedure. The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

Section 41. Time Performances.

~~[(1)]~~ Time performances shall be permitted with the permission of the presiding judge subject to the following:

~~(1)~~~~[(2)]~~ A urine test or blood test or both shall be required for any horse with a winning time performance; ~~and~~~~[-]~~

~~(2)~~~~[(3)]~~ A workout for the judges or time trial performance shall not be used to qualify a horse to race.

Section 42. Unless otherwise provided in the conditions, a purse shall be distributed on the dash basis with the money awarded according to a horse's position in each separate dash or heat of the race. Purse money distribution in overnight events shall be limited to the first five (5) finishers.

Section 43. Dashes.

(1) Except ~~for~~~~[in the case of]~~ stakes or futurities as ~~established~~~~[set forth]~~ in 810 KAR 5:~~050~~~~[040]~~, Section 7, unless otherwise specified in the conditions, the money distribution in dashes shall be in the following percentages: fifty (50), twenty-five (25), twelve (12), eight (8), and five (5).

(2) In early closing races, late closing races, or added money events, if there are less than five (5) starters, the remaining purse shall go to the race winner unless the conditions call for a different distribution.

(3) In overnight events, if there are less than five (5) starters, the purse for the position for which there are no starters shall be retained by the association.

(4) If there is a purse for which horses have started but were unable to finish due to an accident, all non-offending horses that did not finish shall share equally in the premium or premiums.

(5) If there is a purse for which horses have started but were unable to finish and the situation is not covered by subsection (4) of this section, the purse shall be paid to the winner.

Section 44. If unfavorable weather or other unavoidable cause exists that necessitates postponement of a race, and the judges consent, an association shall postpone a race in the following manner:

(1) Early closing races, stakes, and futurities shall be postponed to a definite hour the next fair day and good track.

(2) A late closing race, early closing race, stake, or futurity (except as provided in subsections (4) and (5) of this section) that cannot be raced during the scheduled meeting shall be declared

off, and the entrance money and forfeits shall be divided equally among the nominators who have horses declared in and eligible to start.

(3) A late closing race or early closing race that has been started and remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary. A late closing race or early closing race that has been started but postponed by rain earlier in the meeting shall be declared ended and the full purse divided according to the summary, if there is sufficient time to conduct the race during the scheduled meeting.

(4) A stake or futurity shall be raced where advertised, and the race meeting, if necessary, shall be extended. A stake or futurity that has been started and remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary, unless the association elects to extend the meeting to complete the race. A horse that is scratched after a heat and before a race is declared finished shall not participate in purse distribution from subsequent heats.

(5) Unless otherwise provided in the conditions of the race, unanimous consent shall be obtained from the association and from those with eligibles in the race before a stakes race or futurity may be transferred to another meeting.

(6) At a meeting of more than five (5) days duration, an overnight event may be postponed and carried over for a maximum of two (2) racing days.

(7) At a meeting of five (5) days duration or less, an overnight event or late closing race shall be cancelled and starting fees shall be returned if postponement occurs, unless the association adds the postponed race to the advertised program and the race is held within two (2) weeks of cancellation.

(8) A postponed race may, at the option of the association, be contested in a single mile dash. If a race is postponed under this administrative regulation, the association shall select the order in which the events shall be raced in any combined program.

#### Section 45. Post Time.

(1) If racing is conducted at night or twilight, the racing program shall be completed no later than 12:00 a.m., midnight.

(2) Post time for the first race of the evening shall be fixed by the association. A delay in the first post of not more than ten (10) minutes from the established post time may be taken without prior approval of the commission.

#### Section 46. Number of Races Per Program.

(1) If eight (8) races are programmed, four (4) completed races shall constitute a completed program.

(2) If nine (9) races are programmed, five (5) completed races shall constitute a completed program.

(3) If ten (10) or more races are programmed, six (6) completed races shall constitute a completed program.

Section 47. Postponements.

(1) Racing shall not be conducted by an association over a track that is dangerous to drivers or horses.

(2) If inclement weather or other conditions appear to make the track dangerous, the presiding judge, a representative of the association, and a representative of the Kentucky Harness Horseman's Association or the Kentucky Harness Association shall determine whether racing shall be conducted or postponed.

(3) If a difference of opinion exists between the representative of the association and the representative of the Kentucky Harness Horseman's Association or the Kentucky Harness Association as to whether racing shall be conducted or postponed, the decision of the presiding judge shall be final.

Section 48. Protests. Protests shall:

(1) Be made only by:

- (a) An owner;
- (b) A manager;
- (c) A trainer; or
- (d) A driver; **[and]**

(2) **[Shall]** Be made at any time before distribution of the purse is made;

(3) **[Shall]** Be made in writing;

(4) **[Shall]** Be sworn to; and

(5) **[Shall]** Contain at least one (1) specific charge questioning eligibility which, if true, would prevent the offending horse from competing in the race.

Section 49. The judges shall, in case of protest, demand that the driver and the owner or owners, if present, shall immediately testify under oath. If a person refuses to testify after being ordered to do so and the race has not yet started, that person's horse shall not be allowed to start or continue in the race, but shall be ruled out, and any entrance money shall be forfeited.

Section 50. Unless the judges find satisfactory evidence to warrant excluding the horse, they shall allow a horse to start or continue in the race under protest. If the purse is won by that horse, it shall be retained by the association on behalf of the commission to allow the interested parties to continue the protest proceeding, in accordance with Section 53 of this administrative regulation.

Section 51. A person shall not knowingly, and with intent to influence the results of a race, protest a horse falsely and without cause.

Section 52. This administrative regulation shall not affect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the distribution is made upon the official placing at the conclusion of the heat or dash.

Section 53. (1) A protest shall be reviewed and appealed in accordance with the procedures set forth in 810 KAR 8:030 and KRS Chapter 13B.

(2) The purse money affected shall be deposited with the association pending the decision of the protest review or appeal.

Section 54. A judge shall not refuse to accept a protest.

Section 55. A person who has knowledge, prior to a race, of information that would prevent an ineligible horse from running in a race, and who fails to file a protest prior to the race with regard to that horse, shall have waived the right to protest after the race if the protest would have prevented the ineligible horse from running in the race.

Section 56. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) Rules and Regulations of the United States Trotting Association, 2018, Rule 18, Section 25, "Sulky Performance Standards"; and

(b) The Snell Memorial Foundation's "2000 Standard for Protective Headgear for Use in Harness Racing".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. ~~**[This material is also available on the Kentucky Horse Racing Commission Web site, <http://khrc.ky.gov>.]**~~

FRANKLIN S. KLING JR., Chairman

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: February 13, 2020

FILED WITH LRC: February 14, 2020 at 9 a.m.

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**SUGGESTED SUBSTITUTE**

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission**

**810 KAR 7:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.**

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802~~[, 230.990]~~

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the **Kentucky Horse Racing** Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting. KRS 230.770(1) establishes the Kentucky standardbred development fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) **requires[authorizes]** the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions.

(1) "Commission" means the Kentucky Horse Racing Commission.

(2) "Consolation" means the race following a series of preliminary legs for the next preferred horses, as **established[set forth]** in Section **6[8]** of this administrative regulation, which did not qualify for the finals of each racing division of the Kentucky Sire Stakes program.

(3) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sire Stakes Program.

(4) "Kentucky-bred" means a standardbred horse that is:

(a) Foaled out of a standardbred mare that is registered with the commission and is a resident of Kentucky ~~[as provided in this administrative regulation]~~; or

(b) Sired by a standardbred stallion residing in Kentucky that meets the requirements of this administrative regulation.

(5) "Kentucky Sire Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.

(6) "KSBI" means the Kentucky Standardbred Breeders' Incentive Fund as established in KRS 230.802.

(7) "KSDF" means the Kentucky Standardbred Development Fund as established in KRS 230.770.

(8) "Stallion residing in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered that does not service mares in any other state, jurisdiction, or country outside Kentucky during the calendar year in which the stallion is registered.

(9) "USTA" means the United States Trotting Association.

## Section 2. Domicile Requirements.

(1)(a) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion to breed and to have his progeny eligible for the KSDF or KSBI shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBI Stallion Certificate of Eligibility Form", KHRC 7-040-2.

(b) Standardbred stallions not residing in Kentucky are not required to register with the commission. The progeny of a standardbred stallion not residing in Kentucky is not eligible for the KSDF or KSBI unless the progeny is that of a standardbred mare registered under and meeting the requirements of this administrative regulation.

(c) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

(2) (a) An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBI shall register the mare by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBI Mare Certificate of Eligibility Form", KHRC 7-040-3.

(b) To be eligible for registration, the mare shall:

1. Be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency; and

2. Have resided in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(c) If a horse is conceived by embryo and ovum transplant (ET), both the donor mare and recipient mare shall be registered during the year of conception, and the recipient mare shall

reside in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(3) Registrations shall be received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible.

(4) An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF shall be responsible for:

- (a) The registrations and records of the farm where the stallion stands or the mare resides; and
- (b) Complying with all applicable requirements of this administrative regulation.

### Section 3. Eligibility.

(1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred and maintain eligibility for the KSDF and KSBIF.

(2) (a) Except as provided by paragraph (b) of this subsection, only a foal that is the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo and ovum transplant (ET), shall be eligible for the Kentucky Sire Stakes.

(b) Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

(3) Any future offspring of foals ineligible for racing under this section shall be ineligible for the Kentucky Sire Stakes.

### Section 4. Distance. Each Kentucky Sire Stakes race shall be a one (1) mile dash.

Section 5. Post Positions. Post positions for the final, consolation, and all preliminary legs of the Kentucky Sire Stakes race shall be an open draw with two (2) horses drawn for the final and consolation races that are designated as "also eligibles" under Section 6~~(7)~~~~(6)~~ of this administrative regulation.

### Section 6. Eligibility for the Final and Consolation Races.

(1) Beginning with the 2018 Kentucky Sire Stakes races, consolation races may be eligible for funding.

(2) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final or consolation.

(a) All horses earning points may enter in the final with:

- 1. The top eight (8) point earners, if the horses raced on a half (1/2) mile track or five-eighths (5/8) mile track; or
- 2. Top ten (10) point earners, if the horses raced on a one (1) mile track, to be declared eligible.

(b) On a half (1/2) mile track or five-eighths (5/8) mile track, the top eight (8) point earners shall not be eligible for the consolation. On a one (1) mile track, the top ten (10) point earners shall not be eligible for the consolation.

(c) A horse that is eligible to race in the final shall only be eligible to race in the final, unless the horse is qualified as an also eligible.

(d) A horse that is eligible to race in the consolation shall only be eligible to race in the consolation, unless qualified in the final as an also eligible.

(e) A horse that scratches from the final shall not race in the consolation.

(f) A horse that has qualified for the final or consolation shall remain eligible for the final or consolation.

(g) At least seven (7) eligible horses shall be declared for a consolation race to be contested.

(h) A horse that is automatically eligible to race in the final race shall not start in the consolation race.

(3) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements established~~[set forth]~~ in subsection (2) of this section and toward determining tiebreaker status as established~~[set forth]~~ in subsection (6)(b) of this section.

(4) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements established~~[set forth]~~ in subsection (2) of this section.

(5) A horse, in order to start in the final or consolation, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(6) (a) If the number of horses eligible and declared into any final or consolation event exceeds the maximum number specified by the KSDF or KSBIF or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;

2. 2nd place - twenty-five (25) points;

3. 3rd place - twelve (12) points;

4. 4th place - eight (8) points;

5. 5th place - five (5) points;

6. 6th place and all other starters - one (1) point; and

7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to paragraph (a) of this subsection, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final or consolation is not declared, the horse with the next highest point total, pursuant to paragraph (a) of this subsection, that is declared shall be eligible for the final or consolation.

(7) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (6) of this section, that are declared into the final or consolation, but do not qualify for the final or consolation, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final or consolation shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final or consolation as a replacement after the official scratch time deadline that is in effect at the host track.

Section 7. Final Order of Finish. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

Section 8. Detention. All starters shall be subject to the detention policy of the racetrack.

Section 9. Number of Starters.

(1) There shall not be more than:

(a) Ten (10) starters in each final race on a one (1) mile track; and

(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 10. Declaration Fees.

(1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of \$500. If a preliminary leg splits into two (2) or more divisions, the declaration fee shall be \$500 per division.

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSBIF shall consist of money from:

(a) Nominating fees;

- (b) Sustaining fees;
- (c) Declaration fees; and
- (d) Added money from the Commonwealth of Kentucky.

(4)(a) Distribution of revenue for Kentucky Sire Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel appointed by the Chairman of the commission and consisting of one (1) representative from each of the following:

- 1. The commission, who shall serve as the chairman of the panel;
- 2. The Kentucky Harness Horseman's Association;
- 3. The Kentucky Harness Association;
- 4. The host racetrack; and

5[4]. One (1) participant~~[Two (2) participants]~~ in the fund nominated by the chairman of the commission from a group of up to four (4)~~[six (6)]~~ nominees recommended by each of the above four (4)~~[three (3)]~~ members having one~~[two]~~ (1) nomination~~[nominations]~~ each.

(b) Each member of the panel shall serve from July 1 through June 30 of the following year and shall be a resident of Kentucky.

(c) The final determination regarding distribution of revenue shall be made by the commission.

#### Section 11. Divisions of Preliminary Legs.

(1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

- 1. Twelve (12) horses or less entered - one (1) division race.
- 2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.
- 3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.
- 4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.
- 5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.
- 6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.

(b) One-half (1/2) and five-eighths (5/8) mile track:

- 1. Nine (9) to ten (10) horses entered - one (1) division.
- 2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.
- 3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.
- 4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.
- 5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.
- 6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.

(c) If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 12. Gait.

(1) Gait shall be specified by the owner of the horse on or before the first two (2) year old payment.

(2) (a) Change of gait[;:

—~~(a)]~~ may be made at the time of declaration at the track.~~[; and]~~

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 13. Divisions. A race shall be raced in separate divisions as follows:

(1) Colt, gelding, ridgeling divisions; and

(2) Filly divisions.

Section 14. Purse Distributions.

(1) The purses awarded for all races shall be distributed on the following percentage basis:

(a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund;

(c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund;

(d) Two (2) starters - fifty (50) percent, and twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund; and

(e) One (1) starter - fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.[

~~(3) In addition to the purses set forth in subsection (1) of this section, \$25,000 shall be awarded in each division of the finals to the owner of the stallion or stallions residing in Kentucky that sired the first, second, or third place finisher, as follows:~~

~~(a) First place: \$15,000;~~

~~(b) Second place: \$7,500; and~~

~~(c) Third place: \$2,500.]~~

Section 15. Cancellations.

(1) If circumstances prevent the racing of an event and the race is not drawn, all funds allocated to the division in each of the preliminary legs or the final shall be refunded and prorated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 20[22] of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 10[12](4) of this administrative regulation.

#### Section 16. Qualifying.

(1) Any horse declared into a Kentucky Sires Stakes race shall:

(a) Show at least one (1) charted race line with no breaks within forty-five (45) days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:

a. A two (2) year old trotter shall have been timed in two minutes and six seconds (2:06) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and four seconds (2:04) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and two seconds (2:02) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and zero seconds (2:00) or faster.

2. On a five-eighths (5/8) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and seven seconds (2:07) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and five seconds (2:05) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and three seconds (2:03) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and one second (2:01) or faster.

3. On a one-half (1/2) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and eight seconds (2:08) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and six seconds (2:06) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and four seconds (2:04) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and two seconds (2:02) or faster.



(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

#### Section 17. Purse Allocations.

(1) At a scheduled meeting of the commission, the commission shall:

(a) Establish the distribution of funds for stakes races for the upcoming year; and

(b) Authorize expenditures at a time it designates.

(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 18. Promotions. The KSDF or KSBIF shall provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund.

#### Section 19. Nomination Fees.

(1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 7-040-1, shall be filed with the commission along with the nomination and sustaining fees.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible to the KSDF and KSBIF as a three (3) year old.

(3). Nomination and sustaining payments shall be made to the KSDF and KSBIF in U.S. funds by a money order or a check drawn on a U.S. bank account.

#### Section 20. Nomination Schedule.

(1) Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.

(2) For yearlings sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, the nomination fee shall be forty (40) dollars per yearling. For yearlings sired by a standardbred stallion not residing in Kentucky, the nomination fee shall be eighty (80) dollars per yearling.

(3) Nominated horses shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall be properly identified to the satisfaction of the commission at the time of the nomination. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other appropriate international harness racing governing agency.

(4) If a horse is not nominated during its yearling year, the horse may be nominated prior to March 15 of its two (2) year old year if:

(a) For horses sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, a nomination fee of \$500 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section; or

(b) For horses sired by a standardbred stallion not residing in Kentucky, a nomination fee of \$600 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section.

(5) Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS	
March 15	\$300
April 15	\$300
May 15	\$300
March 15 payment shall be mandatory to make entry eligible as a three (3) year old.	

(b) THREE (3) YEAR OLD PAYMENTS	
February 15	\$300
March 15	\$300
April 15	\$300

Section 21. Early Closing Events. The commission may provide for separate early closing events for Kentucky-bred horses.

Section 22. Stallion and Breeder awards. The commission may provide for stallion and breeder awards for Kentucky-bred horses.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 7-040-1, 11/2018;

(b) "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 7-040-2, 11/2018; and

(c) "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 7-040-3, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. **~~[This material is also available on the KHRC Web site at <http://khrc.ky.gov>]~~**

FRANKLIN S. KLING JR., Chairman

KERRY B. HARVEY, Secretary

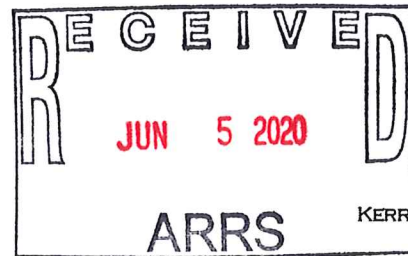
APPROVED BY AGENCY: February 13, 2020

FILED WITH LRC: February 14, 2020 at 9 a.m.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov).

ANDY BESHEAR  
GOVERNOR

JONATHAN RABINOWITZ  
CHAIRMAN



MARC A. GUILFOIL  
EXECUTIVE DIRECTOR

**PUBLIC PROTECTION CABINET**  
**KENTUCKY HORSE RACING COMMISSION**  
ESTABLISHED 1906  
4063 IRON WORKS PKWY., BLDG. B  
LEXINGTON, KENTUCKY 40511  
TELEPHONE: (859) 246-2040 FAX: (859) 246-2039  
WEBSITE: [HTTP://KHRC.KY.GOV](http://KHRC.KY.GOV)

June 5, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: 811 KAR 1:250

Dear Co-Chairs West and Hale:

After detailed discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 811 KAR 1:250, the Kentucky Horse Racing Commission proposes the attached amendments to this regulation. We appreciate your time and attention to these proposed amendments.

Very truly yours,

A handwritten signature in cursive script that reads "Jennifer Wolsing".

Jennifer Wolsing, General Counsel  
Kentucky Horse Racing Commission



**SUGGESTED SUBSTITUTE**

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission**

**811 KAR 1:250. Exotic wagering.**

RELATES TO: KRS 230.210-230.375, **230.750**, 230.990

STATUTORY AUTHORITY: KRS 230.215**(2)**, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361**(1)**, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) **authorizes[grants]** the **Kentucky Horse Racing** Commission **[the authority]** to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel[mutual] wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the procedures and regulations governing exotic wagering under KRS Chapter 230 and 811 KAR Chapter 1.

Section 1. All Pari-mutuel Wagers on an Historical Horse Race Are Exotic Wagers. All pari-mutuel wagers other than win, place, or show wagers on a live horse race are exotic wagers.

Section 2. Exotic Wagers to Be Approved by Commission.

(1) An association shall not offer an exotic wager on any live or historical horse race without the prior written approval of the commission.

(2) An association making a request to offer an exotic wager on a live or historical horse race may make an oral presentation to the commission regarding the wager, prior to the commission deciding on the request.

(a) The presentation shall be made by the association during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the written request and any supplemental information relevant to the commission's determination of the suitability of the wager.

(c) The commission may require an association to clarify or otherwise respond to questions concerning the written request as a condition to approval of the exotic wager.

(3) The commission may request additional information from an association regarding the exotic wager if the additional information would assist the commission in deciding whether to approve it.

(4) In reviewing a written request for an exotic wager, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the wager should be approved.

(5) The commission or its designee shall review and test the exotic wager and shall give its approval if it is satisfied that:

(a) The wager does not adversely affect the safety or integrity of horse racing or pari-mutuel wagering in the Commonwealth; and

(b) The wager complies with KRS Chapter 230 and 811 KAR Chapter 1.

(6) The commission shall notify the association if it determines that the criteria **established/set forth** in subsection (5) of this section are no longer being met and it intends to withdraw approval of a particular exotic wager.

(7) An association shall not implement any change or modification to the practices, procedures, or representations upon which the approval of the exotic wager was based without the prior written approval of the commission.

#### Section 3. Exotic Wagers on a Live Horse Race.

(1) Except as **established/set forth** in subsection (2) of this section, an association shall submit a written request to the commission for permission to offer any exotic wager on a live horse race, which shall include a detailed description of the rules that apply to the wager and the method of calculating payouts.

(2) If the rules have not been modified since the wager was approved by the commission, an association shall not be required to seek the commission's approval to offer the following previously approved exotic wagers on live horse races: Exacta, Perfecta, Quinella, Trifecta, Superfecta, Double Perfecta, Big Q, Twin Trifecta, Daily Double, Super High 5, Pick-3, Pick-4, and Pick-6.

#### Section 4. Exotic Wagers on an Historical Horse Race.

(1) An association shall submit a written request to the commission for permission to offer any exotic wager on an historical horse race, which shall include:

(a) The types, number, and denominations of pari-mutuel wagers to be offered;

(b) A detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts, including how money will be allocated to the seed pool;

(c) The days and hours of operation during which wagering on historical horse races will be offered;

(d) A detailed description of the proposed designated area and the terminal or terminals on which the pari-mutuel wagers will be made, including an architect's rendering of the proposed designated area **that/which** describes the size, construction, layout, capacity, number of

terminals, and location of surveillance and other security equipment, and at least one (1) photograph of the designated area when construction is completed;

(e) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;

(f) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;

(g) The maintenance and repair procedures that will ensure the integrity of the terminals;

(h) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and

(i) A memorandum outlining the terms of the agreement between the association and the Kentucky Harness Horsemen's Association or the Kentucky Harness Association referenced in Section 6(2) of this administrative regulation.

(2)(a) Except as **established[set forth]** in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on an historical horse race shall request, in any application submitted for a license to conduct live horse racing pursuant to KRS 230.300 and 810 KAR 3:010~~[811 KAR 1:037]~~:

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct standardbred racing for the 2010 racing year; and

2. No less than 100 percent of the number of races initially requested by the association in its application to conduct standardbred racing for the 2010 racing year.

(b) An association may apply for less than 100 percent of the number of racing days initially applied for by the association in its application to conduct standardbred racing for 2010, or the number of races initially applied for by the association in its application to conduct standardbred racing for 2010, if written approval is obtained from the commission and the Kentucky Harness Horsemen's Association or the Kentucky Harness Association.

#### Section 5. Terminals Used for Wagering on an Historical Horse Race.

(1) Wagering on historical horse races shall be conducted only on terminals approved by the commission as **established[set forth]** in Sections 2(5) and 5(2) of this administrative regulation. The commission shall not require any particular make of terminal.

(2)(a) The commission shall require testing of each terminal used for wagering on historical horse races by an independent testing laboratory to ensure its integrity and proper working order.

(b) The independent testing laboratory shall be chosen by the commission and the expense of the testing shall be paid by the association offering the wagering on historical horse races.

(3) Each terminal for wagering on an historical horse race shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

#### Section 6. Takeout.

(1) Each association conducting exotic wagering on historical horse races shall deduct a takeout, which shall not exceed the percentages ~~established~~**[set forth]** in KRS 230.750.

(2)(a) Each association shall enter into an agreement with the Kentucky Harness Horsemen's Association or the Kentucky Harness Association establishing the allocation of the takeout on all exotic wagers on historical horse races offered by the association. The agreement shall apply to all exotic wagers on historical horse races offered, or to be offered, by the association during the term of the agreement.

(b) The agreement shall include provisions allocating a percentage of the takeout to purses on live races run by the association.

(c) Each association shall provide a memorandum outlining the terms of the agreement to the commission.

Section 7. Severability. ~~If~~**[In the event that]** any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

FRANKLIN S. KLING JR., Chairman

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: February 13, 2020

FILED WITH LRC: February 14, 2020 at 9 a.m.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov).



## QUESTIONNAIRE

Completing this questionnaire certifies that the information provided is correct to the best of your knowledge.

Indicate (x) where appropriate

Type of Sales (Check all that apply):

☐ Retail   ☐ Wholesale   ☐ Restaurants   ☐ Institutions   ☐ Bakeries   ☐ Other (Please specify below)

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Do you sell fresh shell eggs? ☐ Yes ☐ No

A case is thirty (30) dozen eggs. If 'Yes', how many cases of eggs do you sell in Kentucky per week? \_\_\_\_\_

What company or companies currently supply your shell eggs?

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Do you supply shell eggs to other wholesale egg handlers that supply eggs to businesses in Kentucky? ☐ Yes ☐ No

If 'Yes', list wholesale egg handlers you provide to and give their complete address and Kentucky license number (use separate paper if more space is needed). Please do not assume that we already have this information. We want to be sure that these businesses are being credited for payment of the assessment fees.

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Specialty egg products are defined as: all forms of product that are liquid, frozen, dried, or hard-cooked. This includes: wet-pack and dry-pack prepeeled hard-cooked eggs, either whole, wedged, sliced, chopped, or pickled; long rolls of hard-cooked eggs; frozen omelets; egg patties; quiche; quiche mix; frozen french toast; frozen scrambled egg mix in boilable pouches; frozen fried eggs; frozen precooked scrambled eggs; freeze-dried scrambled eggs; ultra-pasteurized liquid eggs; free-flowing frozen egg pellets; and specially coated shelf-stable hard-cooked eggs; or any other products using eggs.

Do you sell egg products or specialty egg products in KY (this is not referring to fresh shell eggs)? ☐ Yes ☐ No

If 'Yes', give the name, complete address, Kentucky license number, and phone number of all businesses that currently supply you with egg products and/or specialty egg products (use separate paper if more space is needed).

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Do you supply egg products or specialty egg products to other wholesalers or dealers doing business in Kentucky?

☐ Yes ☐ No

If 'Yes', list the complete name, address, Kentucky license number, and phone number of the wholesalers or dealers (use separate paper if more space is needed).

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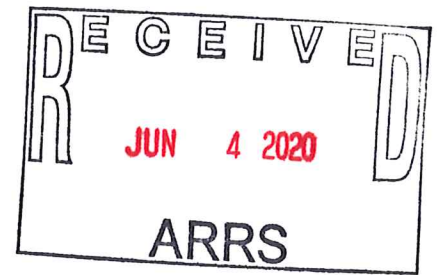
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If you pack eggs, you are required to label the cases and cartons as defined in KRS 260.630 (1) through (4) and 302 KAR 10:100 (3). If you are a packer, indicate your plant number(s).

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of the Secretary**

**Andy Beshear**  
Governor

275 East Main Street, 5W-A  
Frankfort, KY 40621  
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**Eric C. Friedlander**  
Secretary

June 4, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: Agency amendment for 921 KAR 2:015

Dear Co-Chairs West and Hale:

The Department for Community Based Services requests the enclosed agency amendment be made to 921 KAR 2:015.

If you have questions about this amendment, please contact Laura Begin at (502) 502-564-3703.

Sincerely,

Donna Little  
Deputy Executive Director  
Office of Legislative and Regulatory Affairs

Enclosure

**Agency Amendment**

**Cabinet for Health and Family Services  
Department for Community Based Services  
Division of Family Support**

**921 KAR 2:015**

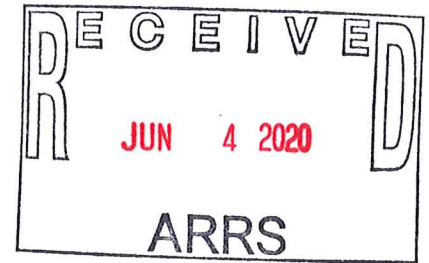
**Page 14**

**Section 13(1)(a)**

**Line 5**

After "cents per diem", insert the following:

, or an increased per diem as a result of a specific budget appropriation.



**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of the Secretary**

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June 4, 2020

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
c/o Emily Caudill  
Administrative Regulation Review Subcommittee  
Legislative Research Commission  
029, Capitol Annex  
Frankfort KY 40601

Re: Suggested amendment for 921 KAR 2:015

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 921 KAR 2:015, the Department for Community Based Services requests the enclosed amendment be made.

Sincerely,

Donna Little  
Deputy Executive Director  
Office of Legislative and Regulatory Affairs

Enclosure

**Suggested Amendment  
Cabinet for Health and Family Services  
Department for Community Based Services  
Division of Family Support**

**921 KAR 2:015**

**Page 8**

**Section 6(1)(b)**

**Line 20**

After "described in the", insert the following:  
current edition of the

**Lines 20 and 21**

After "(DSM)", delete the following:  
, fourth (4<sup>th</sup>) edition or edition currently in use