

1 AN ACT relating to physicians.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 218A.205 is amended to read as follows:

4 (1) As used in this section:

5 (a) "Reporting agency" includes:

- 6 1. The Department of Kentucky State Police;
- 7 2. The Office of the Attorney General;
- 8 3. The Cabinet for Health and Family Services; and
- 9 4. The applicable state licensing board; and

10 (b) "State licensing board" means:

- 11 1. The Kentucky Board of Medical Licensure;
- 12 2. The Kentucky Board of Nursing;
- 13 3. The Kentucky Board of Dentistry;
- 14 4. The Kentucky Board of Optometric Examiners;
- 15 5. The State Board of Podiatry; and
- 16 6. Any other board that licenses or regulates a person who is entitled to
- 17 prescribe or dispense controlled substances to humans.

18 (2) (a) When a reporting agency or a law enforcement agency receives a report of
 19 improper, inappropriate, or illegal prescribing or dispensing of a controlled
 20 substance it may, to the extent otherwise allowed by law, send a copy of the
 21 report within three (3) business days to every other reporting agency.

22 (b) A county attorney or Commonwealth's attorney shall notify the Office of the
 23 Attorney General and the appropriate state licensing board within three (3)
 24 business days of an indictment or a waiver of indictment becoming public in
 25 his or her jurisdiction charging a licensed person with a felony offense
 26 relating to the manufacture of, trafficking in, prescribing, dispensing, or
 27 possession of a controlled substance.

- 1 (3) Each state licensing board shall, in consultation with the Kentucky Office of Drug
 2 Control Policy, establish the following by administrative regulation *promulgated in*
 3 *accordance with KRS Chapter 13A* for those licensees authorized to prescribe or
 4 dispense controlled substances:
- 5 (a) Mandatory prescribing and dispensing standards related to controlled
 6 substances, the requirements of which shall include the diagnostic, treatment,
 7 review, and other protocols and standards established for Schedule II
 8 controlled substances and Schedule III controlled substances containing
 9 hydrocodone under KRS 218A.172 and which may include the exemptions
 10 authorized by KRS 218A.172(4);
- 11 (b) In *accordance*~~accord~~ with the CDC Guideline for Prescribing Opioids for
 12 Chronic Pain published in 2016, a prohibition on a practitioner issuing a
 13 prescription for a Schedule II controlled substance for more than a three (3)
 14 day supply of a Schedule II controlled substance if the prescription is intended
 15 to treat pain as an acute medical condition, with the following exceptions:
- 16 1. The practitioner, in his or her professional judgment, believes that more
 17 than a three (3) day supply of a Schedule II controlled substance is
 18 medically necessary to treat the patient's pain as an acute medical
 19 condition and the practitioner adequately documents the acute medical
 20 condition and lack of alternative treatment options which justifies
 21 deviation from the three (3) day supply limit established in this
 22 subsection in the patient's medical records;
 - 23 2. The prescription for a Schedule II controlled substance is prescribed to
 24 treat chronic pain;
 - 25 3. The prescription for a Schedule II controlled substance is prescribed to
 26 treat pain associated with a valid cancer diagnosis;
 - 27 4. The prescription for a Schedule II controlled substance is prescribed to

1 treat pain while the patient is receiving hospice or end-of-life treatment
 2 or is receiving care from a certified community based palliative care
 3 program;

4 5. The prescription for a Schedule II controlled substance is prescribed as
 5 part of a narcotic treatment program licensed by the Cabinet for Health
 6 and Family Services;

7 6. The prescription for a Schedule II controlled substance is prescribed to
 8 treat pain following a major surgery or the treatment of significant
 9 trauma, as defined by the state licensing board in consultation with the
 10 Kentucky Office of Drug Control Policy;

11 7. The Schedule II controlled substance is dispensed or administered
 12 directly to an ultimate user in an inpatient setting; or

13 8. Any additional treatment scenario deemed medically necessary by the
 14 state licensing board in consultation with the Kentucky Office of Drug
 15 Control Policy.

16 Nothing in this paragraph shall authorize a state licensing board to promulgate
 17 regulations which expand any practitioner's prescriptive authority beyond that
 18 which existed prior to June 29, 2017;

19 (c) A prohibition on a practitioner dispensing greater than a forty-eight (48) hour
 20 supply of any Schedule II controlled substance or a Schedule III controlled
 21 substance containing hydrocodone unless the dispensing is done as part of a
 22 narcotic treatment program licensed by the Cabinet for Health and Family
 23 Services;

24 (d) A procedure for temporarily suspending, limiting, or restricting a license held
 25 by a named licensee where a substantial likelihood exists to believe that the
 26 continued unrestricted practice by the named licensee would constitute a
 27 danger to the health, welfare, or safety of the licensee's patients or of the

1 general public;

2 (e) A procedure for the expedited review of complaints filed against their
 3 licensees pertaining to the improper, inappropriate, or illegal prescribing or
 4 dispensing of controlled substances that is designed to commence an
 5 investigation within seven (7) days of a complaint being filed and produce a
 6 charging decision by the board on the complaint within one hundred twenty
 7 (120) days of the receipt of the complaint, unless an extension for a definite
 8 period of time is requested by a law enforcement agency due to an ongoing
 9 criminal investigation;

10 (f) The establishment and enforcement of licensure standards that conform to the
 11 following:

12 1. **Restrictions that may include** a ~~permanent~~ ban on licensees and
 13 applicants convicted ~~after July 20, 2012,~~ in this state or any other state
 14 of any felony offense relating to ~~controlled substances from~~
 15 prescribing or dispensing a controlled substance;

16 2. Restrictions **that may include** ~~short of~~ a ~~permanent~~ ban on licensees
 17 and applicants convicted in this state or any other state of any
 18 misdemeanor offense relating to prescribing or dispensing a controlled
 19 substance;

20 3. Restrictions mirroring in time and scope any disciplinary limitation
 21 placed on a licensee or applicant by a licensing board of another state if
 22 the disciplinary action results from improper, inappropriate, or illegal
 23 prescribing or dispensing of controlled substances; and

24 4. A requirement that licensees and applicants report to the board any
 25 conviction or disciplinary action covered by this subsection with
 26 appropriate sanctions for any failure to make this required report;

27 (g) A procedure for the continuous submission of all disciplinary and other

- 1 reportable information to the National Practitioner Data Bank of the United
2 States Department of Health and Human Services;
- 3 (h) If not otherwise required by other law, a process for submitting a query on
4 each applicant for licensure to the National Practitioner Data Bank of the
5 United States Department of Health and Human Services to retrieve any
6 relevant data on the applicant; and
- 7 (i) Continuing education requirements beginning with the first full educational
8 year occurring after July 1, 2012, that specify that at least seven and one-half
9 percent (7.5%) of the continuing education required of the licensed
10 practitioner relate to the use of the electronic monitoring system established in
11 KRS 218A.202, pain management, or addiction disorders.
- 12 (4) For the purposes of pharmacy dispensing, the medical necessity for a Schedule II
13 controlled substance as documented by the practitioner in the patient's medical
14 record and the prescription for more than a three (3) day supply of that controlled
15 substance are presumed to be valid.
- 16 (5) A state licensing board shall employ or obtain the services of a specialist in the
17 treatment of pain and a specialist in drug addiction to evaluate information received
18 regarding a licensee's prescribing or dispensing practices related to controlled
19 substances if the board or its staff does not possess such expertise, to ascertain if the
20 licensee under investigation is engaging in improper, inappropriate, or illegal
21 practices.
- 22 (6) Any statute to the contrary notwithstanding, no state licensing board shall require
23 that a grievance or complaint against a licensee relating to controlled substances be
24 sworn to or notarized, but the grievance or complaint shall identify the name and
25 address of the grievant or complainant, unless the board by administrative
26 regulation authorizes the filing of anonymous complaints. Any such authorizing
27 administrative regulation shall require that an anonymous complaint or grievance be

1 accompanied by sufficient corroborating evidence as would allow the board to
2 believe, based upon a totality of the circumstances, that a reasonable probability
3 exists that the complaint or grievance is meritorious.

4 (7) Every state licensing board shall cooperate to the maximum extent permitted by law
5 with all state, local, and federal law enforcement agencies, and all professional
6 licensing boards and agencies, state and federal, in the United States or its
7 territories in the coordination of actions to deter the improper, inappropriate, or
8 illegal prescribing or dispensing of a controlled substance.

9 (8) Each state licensing board shall require a fingerprint-supported criminal record
10 check by the Department of Kentucky State Police and the Federal Bureau of
11 Investigation of any applicant for initial licensure to practice any profession
12 authorized to prescribe or dispense controlled substances.