

CHAPTER 130**(HB 617)**

AN ACT relating to medical practice.

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

Section 1. KRS 311.530 is amended to read as follows:

There is hereby created in state government an independent board to be known as the State Board of Medical Licensure which shall exercise all medical and osteopathic licensure functions heretofore exercised by the State Board of Health. The offices of the board shall be maintained at such place as is designated by the board. The board shall consist of fifteen (15) members, including the commissioner of public health, the dean of the University of Kentucky College of Medicine, the *vice dean for clinical affairs* of the University of Louisville School of Medicine, the dean of the Pikeville College School of Osteopathic Medicine, and eleven (11) members appointed by the Governor. One (1) member shall be a licensed osteopathic physician and shall be appointed from a list of three (3) names submitted by the Kentucky Osteopathic Association. Seven (7) members shall be licensed medical physicians and shall be appointed from a list of three (3) names submitted for each position by the Kentucky Medical Association. Three (3) members shall be citizens at large who are representatives of any recognized consumer advocacy groups with an interest in the delivery of health care and are not associated with or financially interested in the practice or business regulated.

Section 2. KRS 311.535 is amended to read as follows:

The appointed members of the State Board of Medical Licensure shall hold office for terms of four (4) years and until their successors are appointed and qualify. The commissioner of public health and the deans of the medical schools shall hold office only while holding their respective titles. ~~All appointed members who held office as of January 1, 1986, shall continue to hold office until the expiration of their respective terms.~~ The terms of all appointed members of the board shall expire on August 31 of the last year of their respective terms.

Section 3. KRS 311.545 is amended to read as follows:

The State Board of Medical Licensure may utilize such materials, services or facilities as may be made available to it by other state agencies or may contract therefor, to such extent or degree as the board, in its discretion, may determine. It shall ~~have custody of all of the records formerly maintained by the State Board of Health as the medical and osteopathic licensing authority in this state and shall~~ keep accurate records of its activities, reporting annually to the Governor. ~~All unexpended funds under the control of the State Board of Health on September 1, 1972, which were derived from fees collected by it pursuant to KRS 311.565 shall be transferred to the credit of the State Board of Medical Licensure to be expended by it in the performance of the powers and duties confided to it by KRS 311.565.~~

Section 4. KRS 311.550 is amended to read as follows:

As used in KRS 311.530 to 311.620 and KRS 311.990(4) to (6):

- (1) "Board" means the State Board of Medical Licensure;
- (2) "President" means the president of the State Board of Medical Licensure;
- (3) "Secretary" means the secretary of the State Board of Medical Licensure;

- (4) "Executive director" means the executive director of the State Board of Medical Licensure or any assistant executive directors appointed by the board;
- (5) "General counsel" means the general counsel of the State Board of Medical Licensure or any assistant general counsel appointed by the board;
- (6) "Regular license" means a license to practice medicine or osteopathy at any place in this state;
- (7) "Limited license" means a license to practice medicine or osteopathy in a specific institution or locale to the extent indicated in the license;
- (8) "Temporary permit" means a permit issued to a person who has applied for a regular ~~for limited~~ license, and who appears from verifiable information in the application to the **executive director**~~secretary~~ to be qualified and eligible therefor;
- (9) "Emergency permit" means a permit issued to a physician currently licensed in another state, authorizing the physician to practice in this state for the duration of a specific medical emergency, not to exceed thirty (30) days;
- (10) Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;
- (11) The "practice of medicine or osteopathy" does not include the practice of Christian Science, ***the domestic administration of family remedies, the rendering of first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter, the use of automatic external defibrillators in accordance with the provisions of KRS 311.665 to 311.669***, the practice of podiatry as defined in KRS 311.380, the practice of a midlevel health care practitioner as defined in KRS 216.900, the practice of dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015, the practice as a nurse as defined in KRS 314.011, the practice of physical therapy as defined in KRS 327.010, the performance of duties for which they have been trained by paramedics licensed under KRS 311.652 to 311.658, emergency medical technician first responders, or emergency medical technicians certified under KRS 311.652 to 311.658, the practice of pharmacy by persons licensed and registered under KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines, trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or mechanisms that are intended, advertised, or represented as being for the treatment, correction, cure, or relief of any human ailment, disease, injury, infirmity, or condition, in regular mercantile establishments, or the practice of midwifery by women. KRS 311.530 to 311.620 shall not be construed as repealing the authority conferred on the Cabinet for Health Services by KRS Chapter 211 to provide for the instruction, examination, licensing, and registration of all midwives through county health officers;
- (12) "Physician" means a doctor of medicine or a doctor of osteopathy;
- (13) "Grievance" means any allegation in whatever form alleging misconduct by a physician;
- (14) "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;

- (15) "Complaint" means a formal administrative pleading that sets forth charges against a physician and commences a formal disciplinary proceeding;
- (16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those crimes which have dishonesty as a fundamental and necessary element, including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation;
- ~~(17) "Physician assistant" means a person who has graduated from a physician assistant or surgeon assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs and who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants or who possesses a current physician assistant certificate issued by the board prior to July 15, 1998;~~
- ~~(18) "Supervising physician" means a physician licensed by the board who supervises physician assistants; and~~
- ~~(19) "Supervision" means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. The constant physical presence of the supervising physician is not required so long as the supervising physician and physician assistant are or can be easily in contact with one another by radio, telephone, or other telecommunication device. Each team of physicians and physician assistants shall ensure that the delegation of medical tasks is appropriate to the physician assistant's level of training and experience; that the identification of and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.~~
- (20) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of medical data, and medical education;
- (18) ***"Order" means a direction of the board or its panels made or entered in writing that determines some point or directs some step in the proceeding and is not included in the final order;***
- (19) ***"Agreed order" means a written document that includes but is not limited to stipulations of fact or stipulated conclusions of law that finally resolves a grievance, a complaint, or a show cause order issued informally without expectation of further formal proceedings in accordance with subsection (6) of Section 13 of this Act;***
- (20) ***"Final order" means an order issued by the hearing panel that imposes one (1) or more disciplinary sanctions authorized by this chapter;***
- (21) ***"Letter of agreement" means a written document that informally resolves a grievance, a complaint, or a show cause order and is confidential in accordance with Section 22 of this Act;***
- (22) ***"Letter of concern" means an advisory letter to notify a physician that, although there is insufficient evidence to support disciplinary action, the board believes the physician should modify or eliminate certain practices and that the continuation of those practices may result in action against the physician's license;***

- (23) *"Motion to revoke probation" means a pleading filed by the board alleging that the licensee has violated a term or condition of probation and that fixes a date and time for a revocation hearing;*
- (24) *"Revocation hearing" means a hearing conducted in accordance with KRS Chapter 13B to determine whether the licensee has violated a term or condition of probation;*
- (25) *"Chronic or persistent alcoholic" means an individual who is suffering from a medically diagnosable disease characterized by chronic, habitual, or periodic consumption of alcoholic beverages resulting in the interference with the individual's social or economic functions in the community or the loss of powers of self-control regarding the use of alcoholic beverages;*
- (26) *"Addicted to a controlled substance" means an individual who is suffering from a medically diagnosable disease characterized by chronic, habitual, or periodic use of any narcotic drug or controlled substance resulting in the interference with the individual's social or economic functions in the community or the loss of powers of self-control regarding the use of any narcotic drug or controlled substance;*
- (27) *"Provisional permit" means a temporary permit issued to a licensee engaged in the active practice of medicine within this Commonwealth who has admitted to violating any provision of Section 16 of this Act that permits the licensee to continue the practice of medicine until the board issues a final order on the registration or reregistration of the licensee; and*
- (28) *"Fellowship training license" means a license to practice medicine or osteopathy in a fellowship training program as specified by the license.*

Section 5. KRS 311.560 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, no person shall engage or attempt to engage in the practice of medicine or osteopathy within this state, or open, maintain, or occupy an office or place of business within this state for engaging in practice, or in any manner announce or express a readiness to engage in practice within this state, unless the person holds a valid and effective license or permit issued by the board as hereinafter provided.
- (2) The provisions of subsection (1) of this section shall not apply to:
- (a) Commissioned medical officers of the Armed Forces of the United States, or medical officers of the United States Public Health Service, the United States Veterans Administration, and other agencies of the government of the United States of America, while said persons are engaged in the performance, within this state, of their official duties under federal laws;
- (b) 1. Persons who, being nonresidents of Kentucky and lawfully licensed to practice medicine or osteopathy in their states of actual residence, infrequently engage in the practice of medicine or osteopathy within this state, when called to see or attend particular patients in consultation and association with a physician licensed pursuant to this chapter; or
2. Persons who, being current participants in a medical residency program outside of Kentucky and lawfully licensed to practice medicine or osteopathy in the states of their medical residency programs, who participate in a temporary residency rotation of no more than sixty (60) days at a hospital in this

Commonwealth. All persons who participate in a temporary residency rotation under this paragraph shall register with the board at no cost, on forms provided by the board, and shall be subject to the jurisdiction of the board for so long as they participate in the residency rotation. Persons who wish to participate in a second or subsequent temporary residency rotation under this paragraph shall seek advance approval of the board;~~or~~

- (c) Graduates of medical or osteopathic schools approved by the board, while engaged in performing supervised internship or first-year postgraduate training approved by the board at hospitals in this state. All first-year postgraduate trainees shall register with the board at no cost, on forms provided by the board. This shall not be construed to otherwise exempt interns or first-year postgraduate trainees, or to exempt in any manner resident or staff physicians of hospitals, from the licensure requirements of KRS 311.530 to 311.620. A residency physician who participates in a temporary residency rotation under paragraph (b) of this subsection shall not be required to obtain a license under KRS 311.530 to 311.620; *or*
- (d) ***Physicians employed by a sports entity visiting Kentucky for a specific sporting event when the physician holds an active medical or osteopathic license in another state and limits the practice of medicine in Kentucky to medical treatment of the members, coaches, and staff of the sports entity that employs the physician.***

~~(3) Physician assistants shall be considered to practice medicine or osteopathy with physician supervision. A physician assistant may perform those duties and responsibilities that are delegated by the supervising physician. A physician assistant shall be considered the agent of the supervising physician in the performance of all practice-related activities, including, but not limited to, the performance of or ordering of diagnostic, therapeutic, and other medical services. A physician assistant shall not render services in hospitals or other licensed health care facilities without the express written permission of the facility's governing body. The facility may restrict the physician assistant's scope of practice within the facility as the facility deems appropriate.~~

~~(4) A physician assistant may prescribe and administer drugs and medical devices to the extent delegated by the supervising physician. Prescribing and administering of drugs may include all non-scheduled legend drugs. Any physician assistant who is delegated prescribing privileges may request, receive, and sign for professional sample drugs and distribute professional sample drugs to patients.]~~

Section 6. KRS 311.565 is amended to read as follows:

- (1) The board may:
 - (a) Exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy which shall include, but not be limited to, promulgation of reasonable administrative regulations enabling the board to regulate the conduct of its licensees;
 - (b) Promulgate reasonable administrative regulations establishing moral, physical, intellectual, educational, scientific, technical, and professional qualifications of applicants for licenses and permits that may be issued by the board;

- (c) Issue, deny, suspend, limit, restrict, and revoke any licenses or permits that may be issued by the board, and to reprimand or to place licensees on probation, in compliance with the provisions of KRS 311.530 to 311.620;
- (d) Appoint an executive director and assistant executive directors and fix their compensation. The executive director shall oversee the work of the board, shall be authorized to discharge the duties of the secretary, as provided by KRS 311.530 to 311.620, and shall carry out the duties of the executive director as set forth elsewhere in this chapter;
- (e) Appoint a general counsel and assistant general counsel and fix their compensation;
- (f) Appoint investigatory personnel and fix their compensation;
- (g) Appoint one (1) or more hearing officers, who need not be members of the board, and fix their compensation. Every hearing officer shall be vested with the full and complete power and authority of the board to schedule and conduct hearings on behalf of and in the name of the board on all matters referred for hearing by the board or secretary thereof, including, among other things, proceedings for placing licensees on probation and for limitation, suspension, and revocation of licenses. All administrative hearings conducted by the board, a member of the board, or a hearing officer appointed by the board, shall be conducted in accordance with KRS Chapter 13B. No hearing officer shall be empowered to place any licensee on probation or to issue, refuse, suspend, limit, or revoke any license;
- (h) Appoint committees of licensees, who need not be board members, to review issues of public or medical interest before the board and to make recommendations to the board on the issues;
- (i) Promulgate administrative regulations to promote the efficient and fair conduct of disciplinary proceedings;
- (j) Promulgate a code of conduct governing the practice of medicine and osteopathy, which shall be based upon generally-recognized principles of professional ethical conduct;
- (k) Utilize the services and facilities of professional organizations, and procure and receive the assistance and recommendations of professional organizations in administering KRS 311.530 to 311.620;
- (l) Make its personnel and facilities available to other governmental entities under mutually agreeable terms and conditions;
- (m) Issue regular licenses without further testing by endorsement from another state having qualifications and standards at least as high as those of this state or by endorsement from the National Board of Medical Examiners, the National Board of Examiners for Osteopathic Physicians and Surgeons, the National ~~Joint~~ ~~Gain~~ Committee of Preregistration Physician Training Programs, or any approved successors thereof;
- (n) Issue and renew regular licenses to practice medicine or osteopathy in accordance with KRS 311.530 to 311.620 and any reasonable regulations of the board;
- (o) Issue and renew, or refuse to issue or renew, or cancel and terminate limited licenses pursuant to administrative regulations promulgated by the board; provided however, no person who held a limited license for institutional practice or general practice as of

September 1, 1972, shall be denied the renewal of that limited license for nondisciplinary reasons;

- (p) Appoint examiners, who need not be members of the board, and employ or contract with the Federation of State Medical Boards of the United States, Inc., or the National Board of Medical Examiners or other organizations, agencies, or individuals to prepare examination questions and grade examination papers;
 - (q) Determine the schools, colleges, universities, institutions, and training acceptable in connection with licensure under KRS 311.530 to 311.620;
 - (r) Prescribe the time, place, method, manner, scope, and content of examinations~~[-but at least two (2) examinations shall be held annually];~~
 - (s) Prescribe all forms which it considers appropriate, and require the submission of photographs, fingerprints, and personal history data, ***and when deemed appropriate, obtain criminal history information regarding applicants from the National Crime Information Center or comparable sources;***
 - (t) Prescribe and collect reasonable fees and charges for examinations, directories, and the issuance and renewal of licenses and permits; and
 - (u) Impose fines of not greater than five thousand dollars (\$5,000) per violation ***and require the licensee to reimburse the board for the costs of the administrative proceedings including consultant fees,*** upon a finding pursuant to disciplinary proceedings that the licensee has violated any provision of KRS 311.595 to 311.597 or duly-promulgated disciplinary regulation of the board.
- (2) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a physician licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a physician is falsely accused.
- (3) The board, the hearing officer, and investigators hired by the board shall receive training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.

Section 7. KRS 311.571 is amended to read as follows:

- (1) No applicant who is a graduate of a medical or osteopathic school located within the United States and its territories and protectorates or Canada shall be eligible for a regular license to practice medicine in the Commonwealth unless the applicant:
 - (a) Is able to understandably speak, read, and write the English language;
 - (b) Has graduated from an accredited college or university or has satisfactorily completed a collegiate course of study necessary for entry into an approved medical or osteopathic school or college;
 - (c) Has graduated from a prescribed course of instruction in a medical or osteopathic school or college situated in the United States or Canada and approved by the board;
 - (d) Has satisfactorily completed a prescribed course of postgraduate training of a duration to be established by the board in an administrative regulation promulgated in

accordance with KRS Chapter 13A, after consultation with the University of Kentucky College of Medicine, the University of Louisville School of Medicine, and the Pikeville College School of Osteopathic Medicine;

- (e) Has successfully completed~~[, in a single sitting,]~~ an examination prescribed by the board;
 - (f) Has complied with the requirements of KRS 214.615(1); and
 - (g) Has fulfilled all other reasonable qualifications for regular licensure that the board may prescribe by regulation.
- (2) No applicant who is a graduate of a medical or osteopathic school located outside the United States or Canada shall be eligible for a regular license to practice medicine in the Commonwealth unless the applicant:
- (a) Is able to understandably speak, read, and write the English language;
 - (b) Has successfully completed a course of study necessary for entry into an approved medical or osteopathic school or college;
 - (c) Has graduated from a prescribed course of instruction in a medical or osteopathic school or college situated outside the United States or Canada and approved by the board or is a citizen of the United States and has been awarded a diploma by an approved medical or osteopathic school located within the United States or Canada as part of a program designed to allow for the transfer of students to such schools from schools located outside the United States or Canada;
 - (d) Has successfully completed~~[, in a single sitting,]~~ an examination prescribed by the board;
 - (e) Has been certified by the educational commission for foreign medical graduates or by an approved United States specialty board;
 - (f) Has satisfactorily completed a prescribed course of postgraduate training of a duration to be established by the board in an administrative regulation promulgated in accordance with KRS Chapter 13A, after consultation with the University of Kentucky College of Medicine, the University of Louisville School of Medicine, and the Pikeville College School of Osteopathic Medicine;
 - (g) Has complied with the requirements of KRS 214.615(1); and
 - (h) Has fulfilled all other reasonable qualifications for regular licensure that the board may prescribe by regulation.
- (3) No applicant shall be eligible for a limited license-institutional practice unless the applicant:
- (a) Has fulfilled all the requirements for regular licensure as delineated in subsection (1) of this section; or
 - (b) Has fulfilled the requirements for regular licensure as delineated in paragraphs (a) through (e) and (h) of subsection (2) of this section and in addition has satisfactorily completed a prescribed course of postgraduate training of at least one (1) full year's duration approved by the board;
 - (c) Has complied with the requirements of KRS 214.615(1); and

- (d) Has fulfilled all other reasonable qualifications for limited licensure that the board may prescribe by regulation.
- (4) The board may grant an applicant a limited license-institutional practice for ***a renewable***~~an un-renewable~~ period of one (1) year if the applicant:
- (a) Has fulfilled the requirements for regular licensure as delineated in paragraphs (a), (b), (d), (e), and (h) of subsection (2) of this section;
 - (b) Has fulfilled the requirements for a limited license-institutional practice as indicated in subsection (3)(d) of this section;
 - (c) Has satisfactorily completed a prescribed course of postgraduate training of at least one (1) full year's duration approved by the board; and
 - (d) Has complied with the requirements of KRS 214.615(1).
- (5) ***The board may grant an applicant a fellowship training license for a renewable period of one (1) year if the applicant:***
- (a) ***Has been accepted for a fellowship approved by the administration of any of Kentucky's medical schools and conducted under the auspices of that medical school; or***
 - (b) ***Has graduated from a medical school located outside the United States or Canada that has been approved by the board; and***
 1. ***Has been certified by the appropriate licensing authority in his or her home country in the subject specialty of the fellowship; and***
 2. ***Is able to demonstrate that he or she is a physician of good character and is in good standing in the country where he normally practices medicine.***
- (6) An applicant seeking regular licensure in the Commonwealth who was originally licensed in another state may obtain licensure in the Commonwealth without further testing and training if the applicant:
- (a) Has been endorsed in writing by the applicant's original licensing state as being~~currently~~ licensed in good standing in that state; and
 - (b) Would have satisfied all the requirements for regular licensure described in the preceding subsections had the applicant sought original licensure in this state.
- ~~(7)(6)~~ No applicant shall be granted licensure in the Commonwealth unless the applicant has successfully completed an examination prescribed by the board in accordance with any rules that the board may establish by regulation concerning passing scores, testing opportunities and test score recognition.
- ~~(8)(7)~~ Notwithstanding any of the requirements for licensure established by subsections (1) to ~~(7)(6)~~ of this section ***and after providing the applicant or reregistrant with reasonable notice of its intended action and after providing a reasonable opportunity to be heard***, the board may deny licensure to an applicant or the reregistrant of an inactive license without a prior ***evidentiary*** hearing upon a finding that the applicant or reregistrant has violated any provision of KRS 311.595 or 311.597 or is otherwise unfit to practice. Orders denying licensure may be appealed pursuant to KRS 311.593.

- ~~(9)(8)~~ Notwithstanding any of the foregoing, the board may grant licensure to an applicant in extraordinary circumstances upon a finding by the board that based on the applicant's exceptional education, training, and practice credentials, the applicant's practice in the Commonwealth would be beneficial to the public welfare.
- (10) ***Notwithstanding any provision of this section, the board may exercise its discretion to grant a visiting professor license to an applicant after considering the following:***
- (a) ***Whether the applicant meets the qualifications for a regular license;***
 - (b) ***Whether the applicant is licensed to practice medicine in other states or in other countries; and***
 - (c) ***The recommendation of the program director of an accredited medical school that confirms the applicant's employment as a visiting professor and that includes, if necessary, written justification for a waiver of the requirements specified in subsections (1) and (2) of this section.***

Orders denying applications for a visiting professor license shall not be appealed under KRS 311.593.

Section 8. KRS 311.572 is amended to read as follows:

- (1) The board may issue an order directing an applicant for a license or the holder of a license to show cause why the applicant should be granted a license or the licensee should not be disciplined, respectively, when:
 - (a) An applicant admits or is otherwise found to have committed an act which constitutes a violation of the provisions of this chapter; or
 - (b) A licensee admits or is otherwise found to have committed an act in violation of the provisions of this chapter in any document relating to the registration or reregistration of a license.
- (2) The order shall be signed by an officer of the board and shall state those violations which the board believes to have been committed. The matter shall be assigned to a hearing panel and shall proceed in accordance with KRS 311.591. The burden of proof shall lie with the charged physician.
- (3) The board ***may issue a provisional permit to practice medicine as provided in subsection (27) of Section 4 of this Act and the board*** shall not approve any application for licensure or application for reregistration of an inactive license ***or provisional permit*** until a final order on the matter has been issued.

Section 9. KRS 311.575 is amended to read as follows:

- (1) Whenever, in the opinion of the ***executive director***~~[secretary]~~, based upon verified information contained in the application, an applicant for a license to practice medicine or osteopathy is eligible therefor under subsections (1) and (2) of KRS 311.571, the ***executive director***~~[secretary]~~ may issue to such applicant, on behalf of the board, a temporary permit which shall entitle the holder to practice medicine or osteopathy in this state for a maximum of six (6) months from date of issuance thereof unless the temporary permit is sooner canceled by the ***executive director***~~[secretary]~~, who may cancel it at any time, without a hearing, for reasons deemed sufficient to him ***with appropriate consultation with the president***, and who shall cancel it immediately upon direction by the board or upon the

board's denial of the holder's application for a regular license. The permit shall not be renewable.

- (2) The *executive director*~~[secretary]~~ shall present to the board the application for a license made by the holder of the temporary permit. In the event the board issues a regular license to the holder of a temporary permit, the fee paid in connection with any temporary permit then in effect shall be applied upon the prescribed license fee.
- (3) When the *executive director*~~[secretary]~~ cancels a temporary permit, he shall promptly notify, by certified United States mail, the holder of the temporary permit, at his last known address as reflected by the files of the board, and the temporary permit shall become terminated and of no further force and effect three (3) days after the giving of said notice to the holder.

Section 10. KRS 311.580 is amended to read as follows:

- (1) Every certificate of regular license, limited license, *fellowship training license, provisional permit*, and temporary permit shall be in such form as is approved by the board or by the *executive director*~~[secretary]~~ thereof; provided, however, that each certificate shall be signed by the *executive director*~~[secretary]~~ and shall contain the date of issuance, the name of the person to whom issued, and whether the holder is authorized to practice medicine or osteopathy.
- (2) Limited license *and fellowship training* certificates, whether originals or renewals, shall expressly state the period therefor, which shall not be in excess of one (1) year, and shall expressly state the nature and place of work authorized thereunder.
- (3) Temporary permits shall expressly state the date of issuance, that they shall be for a period of not more than six (6) months from date of issuance, and that they are subject to cancellation as provided by KRS 311.575.

Section 11. KRS 311.586 is amended to read as follows:

- (1) Every physician who is practicing medicine or osteopathy in this state~~[on September 1, 1972,]~~ shall~~[, within ninety (90) days]~~ report to the board the address or addresses at which he maintains an office, and every new licensee shall make the same report within ninety (90) days after commencing the practice of medicine or osteopathy in this state.
- (2) Every physician who, after notifying the board of his *official*~~[office]~~ address or addresses, moves his office to a new address shall immediately notify the board of the change.

Section 12. KRS 311.590 is amended to read as follows:

- (1) No person shall make any statement or submit any document, paper, or thing to the board, or to its *executive director*~~[secretary]~~, or to any county clerk, relating in any manner to issuance, registration, suspension, or revocation of any license or permit, knowing same to be false, forged, or fraudulent.
- (2) No person shall engage in dishonesty, fraud, deceit, collusion, or conspiracy in connection with any examination, hearings, or disciplinary proceedings conducted by the board.
- (3) No person shall make or issue any false or counterfeit certificate that purports to have been issued by the board, or by its *executive director*~~[secretary]~~, or forge the signature of any person thereon, or alter any such certificate that has been issued by the board or by its *executive director*~~[secretary]~~.

Section 13. KRS 311.591 is amended to read as follows:

- (1) The president of the board shall divide the membership of the board, excluding himself, into two (2) panels of *seven (7)*~~[six (6)]~~ members, each panel to include *at least* one (1) consumer member. Each panel shall have the power to act as an inquiry or a hearing panel. The president shall not be a *permanent* member of either panel, but shall have the power to render the deciding vote whenever a tie vote is rendered by either panel *and shall have the power to serve as a member of either panel when necessary to achieve a quorum by majority*.
- (2) Grievances may be submitted by an individual (including board members), organization, or entity. Each grievance shall be investigated as necessary and the executive director shall assign each grievance to an inquiry panel. All inquiry panels and the executive director shall have the power to issue investigatory subpoenas for the appearance of any person or production of any record, document, or other item within the jurisdiction of the Commonwealth. The panel or executive director may seek enforcement of investigatory subpoenas and search warrants in the courts of the Commonwealth as may be necessary.
- (3) Upon completion of its inquiry, the inquiry panel shall make a finding that:
 - (a) *There is no evidence of a violation of any medical practice act*~~[The grievance is without merit]~~ and no further action is necessary;
 - (b) *There is insufficient evidence of a violation to warrant the issuance of a complaint, but that there is evidence of a practice or activity that requires modification and the panel may issue a letter of concern under subsection (22) of Section 4 of this Act. The letter of concern shall be a public document and may be used in future disciplinary actions against the physician;*
 - (c) The grievance discloses an instance of misconduct which does not warrant the issuance of a complaint; in these instances, the panel may admonish the physician for his misconduct; or
 - ~~(d)~~~~(e)~~ The grievance discloses one (1) or more violations of the provisions of this chapter which warrant the issuance of a complaint; in these instances, the panel shall cause a complaint to be prepared, signed by the presiding officer, which shall contain sufficient information to apprise the named physician of the general nature of the charges.
- (4) The inquiry panel shall cause a complaint to be served on the charged physician by personal delivery or by certified mail to the physician's last address of which the board has record. The physician shall submit a response within thirty (30) days after service. Failure to submit a timely response or willful avoidance of service may be taken by the board as an admission of the charges.
- (5) Upon the issuance of the complaint, the executive director shall assign the matter for an administrative hearing by a hearing panel. No member who served on the inquiry panel may also serve as a member of the hearing panel. The hearing panel or the hearing officer on behalf of the panel shall preside over all proceedings pursuant to the issuance of a complaint.
- (6) The board may promulgate administrative regulations regarding the informal disposition of any complaint, and an informal disposition may be made at any stage of the proceeding.
- (7) Upon completion of an administrative hearing, the hearing panel shall issue a final order that:

- (a) Dismisses the complaint upon a conclusion that the provisions of this chapter have not been violated;
 - (b) Finds a violation of the provisions of this chapter, but does not impose discipline because the panel does not believe discipline to be necessary under the circumstances; or
 - (c) Imposes discipline upon the licensee; in these instances, the panel may revoke, suspend, restrict, deny, or limit a license, or may reprimand *a licensee* or place a licensee on probation under terms the panel may establish to protect the licensee, his patients, or the general public. The hearing panel may impose a fine whenever it finds that a violation of this chapter has occurred. If the board substantiates that sexual contact occurred between the physician and the patient while the patient was under the care of or in a professional relationship with the physician, the physician's license may be revoked or suspended with mandatory treatment of the physician as prescribed by the board. The board may require the physician to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact. The hearing panel's order shall be considered the final order of the board regarding the matter.
- (8) Regardless of the restrictions on public disclosure of information established in subsection ~~(9)~~~~(10)~~ of this section, the board may order information derived from any investigation or inquiry be released to the physician licensure authority of another state or to any health care or mental health care facility licensed and regulated by the Commonwealth of Kentucky upon a showing that the information is necessary to determine the propriety of a physician practicing in a particular state or facility.
- (9) The presiding officer at any proceeding held pursuant to a complaint or show cause order shall take whatever measures are necessary to protect the privacy interests of individuals other than the charged physician upon a showing that evidence is to be introduced, the public disclosure of which would constitute a clear invasion of personal privacy. It is the general policy of the Commonwealth that administrative proceedings should be open to the public. Therefore, in applying this subsection, the presiding officer shall balance the competing interests and employ the least restrictive measures available to protect the privacy interests involved.

SECTION 14. A NEW SECTION OF KRS 311.530 TO 311.620 IS CREATED TO READ AS FOLLOWS:

- (1) *When a hearing panel imposes discipline in a final order pursuant to KRS 13B.120 and subsection (7) of Section 13 of this Act, the panel may fix the appropriate sanction for the violation, but withhold imposition of the sanction under an order of probation for a period of not more than five (5) years, with the requirement that the physician fully comply with the terms and conditions specified by the panel as necessary for the protection of the public and rehabilitation of the physician's practice.*
- (2) *If the board receives information that a licensee has violated a term or condition of an order of probation issued under subsection (1) of this section during the effective period of that order, the board shall investigate the allegations as necessary. The board shall have all of the powers outlined in subsection (2) of Section 13 of this Act and subsection (2) of Section 19 of this Act to conduct its investigation.*

- (3) *Upon completion of its inquiry relating to a violation of probation, the hearing panel shall make a finding that:*
- (a) *The investigation does not disclose a violation of the order of probation;*
 - (b) *The investigation discloses a violation of a term or condition of the order of probation but that revocation of probation and imposition of the previously fixed sanction may not be necessary for protection of the public, and the panel may admonish or issue a letter of concern to the physician stating its findings and cautioning that another violation shall result in revocation of probation and imposition of the previously fixed sanction; or*
 - (c) *The investigation discloses one (1) or more violations of the terms and conditions of the order of probation, and the panel shall cause a motion to revoke probation to be prepared and signed by the presiding officer. The motion shall identify the term or condition violated and include a general statement of the nature of the violation and shall set a date and time for a revocation hearing.*
- (4) *The hearing panel shall cause the motion to revoke probation to be served on the physician by personal delivery or by certified mail to the last address on record with the board for the physician or the physician's representative.*
- (5) *The hearing on the motion to revoke probation shall be conducted in accordance with KRS Chapter 13B, but the single issue to be decided shall be whether the physician has violated a term or condition of the order of probation. Any recommended order issued under KRS 13B.110 shall be limited to recommended findings of fact and recommended conclusions of law.*
- (6) *Upon completion of the hearing on the motion to revoke probation, the hearing panel shall issue an order that:*
- (a) *Denies the motion upon a conclusion that the order of probation has not been violated;*
 - (b) *Finds a violation of the order of probation but does not impose the previously fixed sanction and the panel may:*
 - 1. *Modify the terms and conditions of probation to address issues presented during the hearing; or*
 - 2. *Admonish the physician or issue a letter of concern to the physician; or*
 - (c) *Imposes the previously fixed sanction.*

Section 15. KRS 311.592 is amended to read as follows:

- (1) At any time when an inquiry panel has probable cause to believe that a physician has violated the terms of an *agreed* order *or violated the terms of a disciplinary order* ~~placing him on probation~~, or a physician's practice constitutes a danger to the health, welfare, and safety of his patients or the general public, the inquiry panel may issue an emergency order, in accordance with KRS 13B.125, suspending, limiting, or restricting the physician's license.
- (2) *For the purposes of a hearing conducted under KRS 13B.125 on an emergency order issued under subsection (1) of this section, the findings of fact in the emergency order shall constitute a rebuttable presumption of substantial evidence of a violation of law that constitutes immediate danger to the health, welfare, or safety of patients or the general*

public. For the purposes of this hearing only, hearsay shall be admissible and may serve as a basis of the board's findings.

- (3) An emergency order as described in subsection (1) of this section shall not be issued unless grounds exist for the issuance of a complaint. The inquiry panel shall issue a complaint prior to the date of the emergency hearing or the emergency order shall become void.
- (4)~~(3)~~ An order of temporary suspension, restriction, or limitation shall not be maintained after a final order is served on the charged physician pursuant to the proceeding on the complaint. An appeal of an emergency order shall not prejudice the board from proceeding upon the complaint.

Section 16. KRS 311.595 is amended to read as follows:

If the power has not been transferred by statute to some other board, commission, or agency of this state, the board may deny an application or reregistration for a license; place a licensee on probation for a period not to exceed five (5) years; suspend a license for a period not to exceed five (5) years; limit or restrict a license for an indefinite period; or revoke any license heretofore or hereafter issued by the board, upon proof that the licensee has:

- (1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing, in connection with an application for a license or permit;
- (2) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license;
- (3) Committed, procured, or aided in the procurement of an unlawful abortion, including a partial-birth abortion;
- (4) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor, under the laws;
- (5) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the physician;
- (6) Become addicted to a controlled substance;
- (7) Become a chronic or persistent alcoholic;
- (8) *Been unable or is unable to practice medicine according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition including but not limited to physical deterioration that adversely affects cognitive, motor, or perceptive skills, or by reason of an extended absence from the active practice of medicine*~~[Developed a physical or mental disability, or other condition, that continued practice is dangerous to patients or to the public];~~
- (9) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof;
- (10) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession;

- (11) Employed, as a practitioner of medicine or osteopathy in the practice of his profession in this state, any person not duly licensed or otherwise aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art;
- (12) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act, including, but not limited to, the code of conduct promulgated by the board under KRS 311.601 or any other valid regulation of the board;
- (13) Violated any agreed order, letter of agreement, *final order, or emergency order* ~~of suspension, or the terms or conditions of any order of probation,~~ issued by the board;
- (14) Engaged in or attempted to engage in the practice of medicine or osteopathy under a false or assumed name, or impersonated another practitioner of a like, similar, or different name;
- (15) Obtained a fee or other thing of value on the fraudulent representation that a manifestly incurable condition could be cured;
- (16) Willfully violated a confidential communication;
- (17) Had his license to practice medicine or osteopathy in any other state, territory, or foreign nation revoked, suspended, restricted, or limited or has been subjected to other disciplinary action by the licensing authority thereof. This subsection shall not require relitigation of the disciplinary action;
- (18) Failed or refused, without legal justification, to practice medicine in a rural area of this state in violation of a valid medical scholarship loan contract with the trustees of the rural Kentucky medical scholarship fund;
- (19) Given or received, directly or indirectly, from any person, firm, or corporation, any fee, commission, rebate, or other form of compensation for sending, referring, or otherwise inducing a person to communicate with a person licensed under KRS 311.530 to 311.620 in his professional capacity or for any professional services not actually and personally rendered; provided, however, that nothing contained in this subsection shall prohibit persons holding valid and current licenses under KRS 311.530 to 311.620 from practicing medicine in partnership or association or in a professional service corporation authorized by KRS Chapter 274, as now or hereinafter amended, or from pooling, sharing, dividing, or apportioning the fees and moneys received by them or by the partnership, corporation, or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association. Nothing contained in this subsection shall abrogate the right of two (2) or more persons holding valid and current licenses under KRS 311.530 to 311.620 to receive adequate compensation for concurrently rendering professional care to a single patient and divide a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and responsibility assumed by each;
- (20) Been removed, suspended, expelled, or disciplined by any professional medical association or society when the action was based upon what the association or society found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action; or
- (21) Been disciplined by a licensed hospital or medical staff of the hospital, including removal, suspension, limitation of hospital privileges, failing to renew privileges for cause,

resignation of privileges under pressure or investigation, or other disciplinary action if the action was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action.

Section 17. KRS 311.597 is amended to read as follows:

As used in KRS 311.595(9), "dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof" shall include, but not be limited to, the following acts by a licensee:

- (1) Prescribes or dispenses any medication:
 - (a) With the intent or knowledge that a medication will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose;~~;~~
 - (b) With the intent to evade any law with respect to sale, use, or disposition of the medication;~~;~~
 - (c) For the licensee's personal use or for the use of his immediate family when the licensee knows or has reason to know that an abuse of *a* controlled *substance*~~substance(s)~~ is occurring, or may result from such a practice;~~;~~~~or~~
 - (d) In such amounts that the licensee knows or has reason to know, under the attendant circumstances, that said amounts so prescribed or dispensed are excessive under accepted and prevailing medical practice standards; *or*
 - (e) *In response to any communication transmitted or received by computer or other electronic means, when the licensee fails to take the following actions to establish and maintain a proper physician-patient relationship:*
 1. *Verification that the person requesting medication is in fact who the patient claims to be;*
 2. *Establishment of a documented diagnosis through the use of accepted medical practices; and*
 3. *Maintenance of a current medical record.*

For the purposes of this paragraph, an electronic, on-line, or telephonic evaluation by questionnaire is inadequate for the initial evaluation of the patient or for any follow-up evaluation.
- (2) Issues, publishes, or makes oral or written, representations in which grossly improbable or extravagant statements are made which have a tendency to deceive or defraud the public, or a member thereof, including, but not limited to:
 - (a) Any representation in which the licensee claims that he can cure or treat diseases, ailments, or infirmities by any method, procedure, treatment, or medicine which the licensee knows or has reason to know has little or no therapeutic value;
 - (b) Represents or professes or holds himself out as being able and willing to treat diseases, ailments, or infirmities under a system or school of practice:
 1. Other than that for which he holds a certificate or license granted by the board, or
 2. Other than that for which he holds a degree or diploma from a school otherwise recognized as accredited by the board, or

3. Under a school or system which he professes to be self-taught.

For purposes of this subsection, actual injury to a patient need not be established.

- (3) A serious act, or a pattern of acts committed during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance, gross negligence, or malpractice.
- (4) Conduct which is calculated or has the effect of bringing the medical profession into disrepute, including, but not limited to, any departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and any departure from, or failure to conform to the principles of medical ethics of the American Medical Association or the code of ethics of the American Osteopathic Association. For the purposes of this subsection, actual injury to a patient need not be established.
- (5) Failure by a licensee to report a known or observed violation of KRS Chapter 311 by another licensee as described in KRS 311.606.

SECTION 18. A NEW SECTION OF KRS 311.530 TO 311.620 IS CREATED TO READ AS FOLLOWS:

- (1) *When a hearing or inquiry panel receives information that a physician has not been engaged in the active practice of medicine for at least two (2) years, the panel may order the physician to successfully complete a board-approved clinical competency examination or a board-approved clinical skills assessment program at the expense of the physician. The panel shall review the results of the examination or assessment and determine whether the physician may resume the practice of medicine without undue risk or danger to patients or the public.*
- (2) *Failure of a physician to successfully complete the clinical competency examination or the clinical skills assessment when directed shall constitute an admission that the physician is unable to practice medicine according to accepted and prevailing standards, unless the failure was due to circumstances beyond the control of the physician. The failure shall constitute a default and a final order may be entered without additional testimony or without presentation of additional evidence.*
- (3) *A physician whose license has been suspended, limited, restricted, or revoked under this section or subsection (8) of Section 16 of this Act shall be afforded an opportunity at reasonable intervals to demonstrate that he or she has the competency and skill to resume the practice of medicine.*

Section 19. KRS 311.605 is amended to read as follows:

- (1) ~~{Every county board of health shall, at such times as are fixed by the board, report to the board the name and address of each person believed to be engaged in the practice of medicine or osteopathy, as defined by KRS 311.550, within their respective jurisdictions. }~~The county boards of health shall~~{also}~~ report to the board and to the county and Commonwealth's attorneys of their respective counties all violations of KRS 311.550 to 311.620 and shall assist in the enforcement thereof.
- (2) For the purpose of enforcing the provisions of KRS 311.550 to 311.620, agents of the board shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, including, but not limited to, psychiatric or nonpsychiatric records, to interrogate all persons, and to require the

production of books, papers, documents, or other evidence. The term "premises" as used in this subsection shall include physician offices and all pharmacies and health care facilities licensed or regulated by the Commonwealth. Agents of the board may only require pharmacies to produce prescription records and health care facilities to produce records of patients or physician peer reviews. Such inspection or seizure of peer review records shall not affect the confidential nature of those records as provided in KRS 311.377, and the board shall maintain such peer review records so as to protect the confidentiality thereof.

- (3) The board may institute, in its own name, proceedings to temporarily or permanently restrain and enjoin *the practice of medicine by*:
- (a) *An individual who is not licensed to practice medicine or who is not involved in conduct specifically exempted from the requirements of this chapter by subsection (11) of Section 4 of this Act; or*
 - (b) *An individual who was previously licensed by the board to practice medicine but is currently practicing medicine in violation of an emergency order of restriction or suspension*~~[violations of KRS 311.550 to 311.620]~~, regardless of whether the *respondent*~~[defendant]~~ has been convicted for violation of the penal provisions thereof.
- (4) *A petition for injunction filed under subsection (3) of this section may be filed in Jefferson Circuit Court, in the county of residence of the respondent, or in the county in which the acts are alleged to have been committed, and the board shall not be required to pay any costs or filing fees or furnish any bond in connection therewith.*
- (a) *In the petition it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of medicine in violation of subsection (3)(a) or (b) of this section. No showing of damage or injury shall be required.*
 - (b) *Issuance of an injunction shall enjoin any act specified under subsection (3)(a) or (b) of this section and shall remain in place as long as necessary to prevent the unlawful practice of medicine.*
 - (c) *Issuance of an injunction shall not relieve the respondent from being subject to any other proceeding under law provided by this chapter or otherwise.*
 - (d) Violation of injunctions and restraining orders shall be punished as a contempt without the intervention of a jury.

Section 20. KRS 311.616 is amended to read as follows:

- (1) The board may establish *by contract or otherwise* an impaired physicians *program*~~[committee, to be designated as the Kentucky Committee on Impaired Physicians,]~~ to promote the early identification, intervention, treatment, and rehabilitation of physicians who may be impaired by reason of illness, alcohol or drug abuse, or as a result of any physical or mental condition.
- (2) *The board may promulgate administrative regulations under the provisions of KRS Chapter 13A to implement any program formed under this section and may expend any funds necessary to provide for operational expenses of a program formed under this section.*

Section 21. KRS 311.618 is amended to read as follows:

Any member of the *program formed under Section 20 of this Act*~~[Kentucky Committee on Impaired Physicians]~~, as well as any administrator, staff member, consultant, agent, or employee of the *program*~~[committee]~~ acting within the scope of their duties and without actual malice, and all other persons who furnish information to the *program*~~[committee]~~ in good faith and without actual malice, shall not be liable for any claim or damages as a result of any statement, decision, opinion, investigation, or action taken by the *program*~~[committee]~~, or by any individual member of the *program*~~[committee]~~.

Section 22. KRS 311.619 is amended to read as follows:

- (1) All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the *program formed under Section 20 of this Act*~~[Kentucky Committee on Impaired Physicians]~~, as well as all communications to or from the *program*~~[committee]~~, and any findings, conclusions, interventions, treatment, or rehabilitation, or other proceedings of the *program*~~[committee]~~ which in any way pertain or refer to a physician who may be, or who is actually, impaired shall be privileged and confidential.
- (2) All records and proceedings of the *program*~~[committee]~~ which pertain or refer to a physician who may be, or who actually is, impaired shall be privileged and confidential and shall be used by the *program*~~[committee]~~ and its members only in the exercise of the proper function of the *program*~~[committee]~~ and shall not be considered public records nor shall they be subject to court subpoena or subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except as described in subsection (3) of this section.
- (3) The *program*~~[committee]~~ may disclose information relative to an impaired physician only:
 - (a) When it is essential to disclose such information to further the intervention, treatment, or rehabilitation needs of the impaired physician, and then only to those persons or organizations with a need to know;
 - (b) When its release is authorized in writing by the impaired physician; or
 - (c) When the *program*~~[committee]~~ is required to make a report to the board.
- (4) *The program shall report any suspected violation of Section 16 of this Act to the board.*

SECTION 23. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

As used in Sections 23 to 34 of this Act:

- (1) *"Board" means the Kentucky Board of Medical Licensure;*
- (2) *"Complaint" means a formal administrative pleading that sets forth charges against a physician assistant and commences a formal disciplinary proceeding;*
- (3) *"Physician assistant" means a person who:*
 - (a) *Has graduated from a physician assistant or surgeon assistant program accredited by the Accreditation Review Commission on Education for Physician Assistants or its predecessor or successor agencies and has passed the certifying examination administered by the National Commission on Certification of Physician Assistants or its predecessor or successor agencies; or*
 - (b) *Possesses a current physician assistant certificate issued by the board prior to the effective date of this Act;*

- (4) *"Supervising physician" means a physician licensed by the board who supervises one (1) or more physician assistants;*
- (5) *"Supervising physician in anesthesia" means a physician licensed by the board who has completed postgraduate training in anesthesiology at an anesthesiology program accredited by the Accreditation Council for Graduate Medical Education or its equivalent; and*
- (6) *"Supervision" means overseeing the activities of and accepting of responsibility for the medical services rendered by a physician assistant. Each team of physicians and physician assistants shall ensure that the delegation of medical tasks is appropriate to the physician assistant's level of training and experience, that the identifications of and access to the supervising physician are clearly defined, and that a process for evaluation of the physician assistant's performance is established.*

SECTION 24. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to the certification and regulation, including temporary certification, of physician assistants.*
- (2) *The board shall establish a nine (9) member Physician Assistant Advisory Committee that shall review and make recommendations to the board regarding all matters relating to physician assistants that come before the board, including but not limited to:*
 - (a) *Applications for physician assistant certification;*
 - (b) *Certification renewal requirements;*
 - (c) *Approval of supervising physicians;*
 - (d) *Disciplinary actions; and*
 - (e) *Promulgation and revision of administrative regulations.*
- (3) *Members of the Physician Assistant Advisory Committee shall be appointed by the board for four (4) year terms and shall consist of:*
 - (a) *Five (5) practicing physician assistants;*
 - (b) *Two (2) supervising physicians;*
 - (c) *One (1) member of the board; and*
 - (d) *One (1) citizen at large.*
- (4) *The chairperson of the committee shall be elected by a majority vote of the committee members and shall be responsible for presiding over meetings that shall be held on a regular basis.*
- (5) *Members shall receive reimbursement for expenditures relating to attendance at committee meetings consistent with state policies for reimbursement of travel expenses for state employees.*
- (6) *Nothing in this chapter shall be construed to require certification of a physician assistant student enrolled in a physician assistant or surgeon assistant program accredited by the Accreditation Review Commission Education for Physician Assistants or its successor*

agencies or of a physician assistant employed in the service of the federal government while performing duties relating to that employment.

SECTION 25. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *To be certified by the board as a physician assistant, an applicant shall:*
 - (a) *Submit a completed application form with the required fee;*
 - (b) *Be of good character and reputation;*
 - (c) *Be a graduate of an approved program; and*
 - (d) *Have passed an examination approved by the board within three (3) attempts.*
- (2) *A physician assistant who is authorized to practice in another state and who is in good standing may apply for certification by endorsement from the state of his or her credentialing if that state has standards substantially equivalent to those of this Commonwealth.*
- (3) *A physician assistant's certification shall be renewed upon fulfillment of the following requirements:*
 - (a) *The holder shall be of good character and reputation;*
 - (b) *The holder shall provide evidence of completion during the previous two (2) years of a minimum of one hundred (100) hours of continuing education approved by the American Medical Association, the American Osteopathic Association, the American Academy of Family Physicians, the American Academy of Physician Assistants, or by another entity approved by the board;*
 - (c) *The holder shall provide evidence of completion of a continuing education course on the human immunodeficiency virus and acquired immunodeficiency syndrome in the previous ten (10) years that meets the requirements of KRS 214.610; and*
 - (d) *The holder shall provide proof of current certification with the National Commission on Certification of Physician Assistants.*

SECTION 26. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The examination of the National Commission on Certification of Physician Assistants for certification as a physician assistant shall be approved by the board.*
- (2) *Educational and training programs approved by the board shall include physician assistant programs that are accredited by the Accreditation Review Commission on Education for Physician Assistants or its predecessor or successor agencies.*
- (3) *Training programs for the provision of general or regional anesthesia shall be accredited by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs.*
- (4) *A trainee enrolled in an approved program shall be supervised and the training program shall be responsible for the services provided by the trainee. A trainee shall have the same scope of practice as a physician assistant and shall not be considered to be practicing without authorization while enrolled in a training program.*

SECTION 27. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "medical emergency" means a real and substantial threat to public health or the health of an individual as determined by the executive director of the board that requires additional professional resources.*
- (2) *In a medical emergency, the board may approve an additional physician assistant for a supervising physician practicing in this Commonwealth for a period not to exceed thirty (30) days who:*
 - (a) *Submits satisfactorily completed forms to the board; and*
 - (b) *Is credentialed and in good standing in this Commonwealth.*
- (3) *In a medical emergency, the board may issue an emergency permit to a physician assistant who:*
 - (a) *Is credentialed and in good standing in another state or Canadian province;*
 - (b) *Submits satisfactorily completed forms to the board; and*
 - (c) *Based on verifiable information, meets the requirements for regular certification under Section 25 of this Act.*
- (4) *An emergency permit:*
 - (a) *Shall be valid for a period of time not to exceed thirty (30) days;*
 - (b) *Shall not be renewed or reissued and shall be immediately canceled if a medical emergency no longer exists;*
 - (c) *May be canceled by the executive director upon reasonable cause without a prior hearing; and*
 - (d) *Shall not authorize a physician assistant to practice beyond a specified geographical area, beyond the scope of practice encompassed by the medical emergency, or without the supervision of a supervising physician.*

SECTION 28. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The board may revoke, suspend, deny, decline to renew, limit, or restrict the certification of a physician assistant, or may fine, reprimand or place a physician assistant on probation for no more than five (5) years upon proof that a physician assistant has:*
 - (a) *Knowingly made or presented or caused to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other document relating to an application for certification;*
 - (b) *Practiced, aided, or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy relating to an examination for certification;*
 - (c) *Been convicted by any court of a misdemeanor offense involving moral turpitude or been convicted of an act that is or would be a felony under the laws of the Commonwealth of Kentucky or of the United States;*
 - (d) *Become addicted to or is an abuser of alcohol, drugs, or any illegal substance;*

- (e) *Developed a physical or mental disability or other condition that presents a danger in continuing to practice medicine to patients, the public, or other health care personnel;*
 - (f) *Knowingly made or caused to be made or aided or abetted in the making of a false statement in any document executed in connection with the practice of medicine or osteopathy;*
 - (g) *Performed any act or service as a physician assistant without a designated supervising physician;*
 - (h) *Exceeded the scope of medical services described by the supervising physician in the applications required under Section 30 of this Act;*
 - (i) *Exceeded the scope of practice for which the physician assistant was credentialed by the governing board of a hospital or licensed health care facility under Sections 31 and 32 of this Act;*
 - (j) *Aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any healing art including the unlawful practice of physician assistants;*
 - (k) *Willfully violated a confidential communication;*
 - (l) *Performed the services of a physician assistant in an unprofessional, incompetent, or grossly or chronically negligent manner;*
 - (m) *Been removed, suspended, expelled, or placed on probation by any health care facility or professional society for unprofessional conduct, incompetence, negligence, or violation of any provision of this section or Section 32 or 34 of this Act;*
 - (n) *Violated any applicable provision of administrative regulations relating to physician assistant practice;*
 - (o) *Violated any term of probation or other discipline imposed by the board; or*
 - (p) *Failed to complete the required number of hours of approved continuing education.*
- (2) *All disciplinary proceedings against a physician assistant shall be conducted in accordance with the provisions of Sections 13 and 15 of this Act, KRS 311.593, 311.599, and KRS Chapter 13B and related administrative regulations promulgated under KRS Chapter 311.*

SECTION 29. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *At any time when an inquiry panel established under Section 13 of this Act has probable cause to believe that a physician assistant has violated the terms of an agreed order as defined in subsection (19) of Section 4 of this Act, or violated the terms of a disciplinary order, or that a physician assistant's practice constitutes a danger to the health, welfare, or safety of his or her patients or the general public, the inquiry panel may issue an emergency order in accordance with KRS 13B.125 suspending, limiting, or restricting the physician assistant's certification.*
- (2) *For the purposes of a hearing conducted under KRS 13B.125 on an emergency order issued under this section, the findings of fact in the emergency order shall constitute a rebuttable presumption of substantial evidence of a violation of law that constitutes*

immediate danger to the health, welfare, or safety of patients or the general public. For the purposes of this hearing only, hearsay shall be admissible and may serve as a basis of the board's findings.

- (3) *An emergency order as described in subsection (1) of this section shall not be issued unless grounds exist for the issuance of a complaint. The inquiry panel shall issue a complaint prior to the date of the emergency hearing or the emergency order shall become void.*
- (4) *An order of temporary suspension, restriction, or limitation shall not be maintained after a final order as defined in subsection (20) of Section 4 of this Act is served on the charged physician assistant pursuant to the proceeding on the complaint. An appeal of an emergency order shall not prejudice the board from proceeding with the complaint.*

SECTION 30. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A physician shall not supervise a physician assistant without approval of the board. Failure to obtain board approval as a supervising physician or failure to comply with the requirements of Sections 23 to 34 of this Act or related administrative regulations shall be considered unprofessional conduct and shall be subject to disciplinary action by the board that may include revocation, suspension, restriction, or placing on probation the supervising physician's right to supervise a physician assistant.*
- (2) *To be approved by the board as a supervising physician, a physician shall:*
 - (a) *Be currently licensed and in good standing with the board;*
 - (b) *Maintain a practice primarily within this Commonwealth. The board in its discretion may modify or waive this requirement;*
 - (c) *Submit a completed application and the required fee to the board. The application shall include but is not limited to:*
 1. *A description of the nature of the physician's practice;*
 2. *A statement of assurance by the supervising physician that the scope of medical services and procedures described in the application or in any supplemental information shall not exceed the normal scope of practice of the supervising physician;*
 3. *A description of the means by which the physician shall maintain communication with the physician assistant when they are not in the same physical location;*
 4. *The name, address, and area of practice of one (1) or more physicians who agree in writing to accept responsibility for supervising the physician assistant in the absence of the supervising physician; and*
 5. *A description of the scope of medical services and procedures to be performed by the physician assistant for which the physician assistant has been trained in an approved program.*
- (3) *Prior to a physician assistant performing any service or procedure beyond those described in the initial application submitted to the board under subsection (2)(c) of this section, the supervising physician shall supplement that application with information that includes but is not limited to:*

- (a) *A description of the additional service or procedure;*
- (b) *A description of the physician assistant's education, training, experience, and institutional credentialing;*
- (c) *A description of the level of supervision to be provided for the additional service or procedure; and*
- (d) *The location or locations where the additional service or procedure will be provided.*

The initial and supplemental applications required under this section may be submitted to the board at the same time.

- (4) *A physician who has been supervising a physician assistant prior to the effective date of this Act may continue supervision and the physician assistant may continue to perform all medical services and procedures that were provided by the physician assistant prior to the effective date of this Act. The supervising physician shall submit the initial application and any supplemental application as required in this section by October 15, 2002.*
- (5) *A physician may enter into supervision agreements with a maximum of four (4) physician assistants but shall not supervise more than two (2) physician assistants at any one (1) time. Application for board approval to be a supervising physician shall be obtained individually for each physician assistant.*
- (6) *The board may impose restrictions on the scope of practice of a physician assistant or on the methods of supervision by the supervising physician upon consideration of recommendations of the Physician Assistant Advisory Committee established in Section 24 of this Act after providing the applicant with reasonable notice of its intended action and after providing a reasonable opportunity to be heard.*

SECTION 31. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

A supervising physician shall:

- (1) *Restrict the services of a physician assistant to services within the physician assistant's scope of practice and to the provisions of Sections 32 to 34 of this Act;*
- (2) *Prohibit a physician assistant from prescribing or dispensing controlled substances;*
- (3) *Inform all patients in contact with a physician assistant of the status of the physician assistant;*
- (4) *Post a notice stating that a physician assistant practices medicine or osteopathy in all locations where the physician assistant may practice;*
- (5) *Require a physician assistant to wear identification that clearly states that he or she is a physician assistant;*
- (6) *Prohibit a physician assistant from independently billing any patient or other payor for services rendered by the physician assistant;*
- (7) *If necessary, participate with the governing body of any hospital or other licensed health care facility in a credentialing process established by the facility;*
- (8) *Not require a physician assistant to perform services or other acts that the physician assistant feels incapable of carrying out safely and properly;*

- (9) *Maintain adequate, active, and continuous supervision of a physician assistant's activities to assure that the physician assistant is performing as directed and complying with the requirements of Sections 23 to 34 of this Act and all related administrative regulations;*
- (10) *Sign all records of service rendered by a physician assistant in a timely manner as certification that the physician assistant performed the services as delegated;*
- (11) (a) *Reevaluate the reliability, accountability, and professional knowledge of a physician assistant two (2) years after the physician assistant's original certification in this Commonwealth and every two (2) years thereafter; and*
 (b) *Based on the reevaluation, recommend approval or disapproval of certification or recertification to the board; and*
- (12) *Notify the board within three (3) business days if the supervising physician:*
 - (a) *Ceases to supervise or employ the physician assistant; or*
 - (b) *Believes in good faith that a physician assistant violated any disciplinary rule of Sections 23 to 34 of this Act or related administrative regulations.*

SECTION 32. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A physician assistant may perform medical services and procedures within the scope of medical services and procedures described in the initial or any supplemental application received by the board under Section 30 of this Act.*
- (2) *A physician assistant shall be considered an agent of the supervising physician in performing medical services and procedures described in the initial application or any supplemental application received by the board under Section 30 of this Act.*
- (3) *A physician assistant may initiate evaluation and treatment in emergency situations without specific approval.*
- (4) *A physician assistant may prescribe and administer all nonscheduled legend drugs and medical devices as delegated by the supervising physician. A physician assistant who is delegated prescribing authority may request, receive, and distribute professional sample drugs to patients.*
- (5) *A physician assistant shall not submit direct billing for medical services and procedures performed by the physician assistant.*
- (6) *A physician assistant may perform local infiltrative anesthesia under the provisions of subsection (1) of this section, but a physician assistant shall not administer or monitor general or regional anesthesia unless the requirements of Section 34 of this Act are met.*
- (7) *A physician assistant may perform services in the offices or clinics of the supervising physician. A physician assistant may also render services in hospitals or other licensed health care facilities only with written permission of the facility's governing body, and the facility may restrict the physician assistant's scope of practice within the facility as deemed appropriate by the facility.*
- (8) *A physician assistant shall not practice medicine or osteopathy independently. Each physician assistant shall practice under supervision as defined in Section 23 of this Act.*

SECTION 33. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A supervising physician who uses the services of a physician assistant in an office or clinic separate from the physician's primary office shall submit for board approval a specific written request that describes the services to be provided by the physician assistant in the separate office or clinic, the distance between the primary office and the separate location, and the means and availability of direct communication at all times with the supervising physician.*
- (2) *A physician assistant shall not practice medicine or osteopathy in an office, clinic, or separate location from the supervising physician unless the physician assistant has two (2) continuous years of experience in a non-separate location. The board in its discretion may modify or waive the requirements of this subsection.*
- (3) *Except as provided by Section 34 of this Act, a physician assistant may perform services when the supervising physician is not physically present in the supervising physician's office or clinic when a reliable means of direct communication with the supervising physician is available at all times.*
- (4) *Except as provided by Section 34 of this Act, a physician assistant may perform services when the supervising physician is not physically present in a hospital or other licensed health care facility when a reliable means of direct communication with the supervising physician is available at all times and the hospital or facility has given specific approval for the provision of physician assistant services without the physical presence of the supervising physician.*

SECTION 34. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A physician assistant who was practicing as an anesthesiology assistant in Kentucky prior to the effective date of this Act, may continue to practice if the physician assistant:*
 - (a) *Met the practice, education, training, and certification requirements specified in Sections 25 and 26 of this Act;*
 - (b) *Is a graduate of an approved program accredited by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs that is specifically designed to train an individual to administer general or regional anesthesia; and*
 - (c) *Is employed by a supervising physician in anesthesia.*
- (2) *A physician assistant who has not practiced as an anesthesiology assistant in Kentucky prior to the effective date of this Act, shall meet the following requirements prior to practicing as an anesthesiology assistant:*
 - (a) *Graduation from an approved four (4) year physician assistant program as specified in subsection (1)(b) of this section and graduation from another two (2) year approved and accredited program that consists of academic and clinical training in anesthesiology;*
 - (b) *Compliance with the practice, education, training, and certification requirements specified in Sections 25 and 26 of this Act; and*
 - (c) *Employment with a supervising physician in anesthesia.*
- (3) *A physician assistant practicing as an anesthesiology assistant shall not administer or monitor general or regional anesthesia unless the supervising physician in anesthesia:*

- (a) Is physically present in the room during induction and emergence;*
- (b) Is not concurrently performing any other anesthesiology procedure; and*
- (c) Is available to provide immediate physical presence in the room.*

Section 35. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

- (1) "Advertisement" means all representations, disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- (2) "Bread" and "enriched bread" mean only the foods commonly known and described as white bread, white rolls, white buns, enriched white bread, enriched rolls, and enriched white buns, as defined under the federal act;
- (3) "Cabinet" means the Cabinet for Health Services or its designee;
- (4) "Color" means but is not limited to black, white, and intermediate grays;
- (5) "Color additive" means a material that:
 - (a) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source. Nothing in this paragraph shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest; or
 - (b) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with another substance, of imparting color. "Color additive" does not include any material that has been or may in the future be exempted under the federal act;
- (6) "Contaminated with filth" means any food, drug, device, or cosmetic that is not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminants;
- (7) "Cosmetic" means:
 - (a) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
 - (b) Articles intended for use as a component of those articles, except that the term shall not include soap;
- (8) "Device," except when used in subsection (48) of this section, KRS 217.035(6), KRS 217.065(3), KRS 217.095(3), and KRS 217.175(10), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:
 - (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

- (b) To affect the structure or any function of the body of man or other animals;
- (9) "Dispense" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (10) "Dispenser" means a person who lawfully dispenses a drug or device to or for the use of an ultimate user;
- (11) "Drug" means:
 - (a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
 - (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
 - (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and
 - (d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;
- (12) "Enriched," as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of enriched flour as defined under the federal act;
- (13) "Environmental Pesticide Control Act of 1972" means the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, and all amendments thereto;
- (14) "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. secs. 1451 et seq., and all amendments thereto;
- (15) "Federal act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. secs. 301 et seq., 52 Stat. 1040 et seq., or amendments thereto;
- (16) "Filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition does not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending, or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated,

whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;

- (17) "Flour" means only the foods commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;
- (18) "Food" means:
- (a) Articles used for food or drink for man or other animals;
 - (b) Chewing gum; and
 - (c) Articles used for components of any such article;
- (19) "Food additive" means any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any of these uses, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:
- (a) A pesticide chemical in or on a raw agricultural commodity;
 - (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
 - (c) A color additive; or
 - (d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq.; or the Meat Inspection Act of 1907; and amendments thereto;
- (20) "Food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but does not include retail food establishments;
- (21) "Food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; charitable food kitchens; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It does not include food vending machines, establishments serving beverages only in single service or original containers, or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;

- (22) "Food storage warehouse" means any establishment in which food is stored for subsequent distribution;
- (23) "Immediate container" does not include package liners;
- (24) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness or injury based on:
 - (a) The number of potential illnesses or injuries; or
 - (b) The nature, severity, and duration of the anticipated illness or injury;
- (25) "Interference" means threatening or otherwise preventing the performance of lawful inspections or duties by agents of the cabinet during all reasonable times of operation;
- (26) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;
- (27) "Labeling" means all labels and other written, printed, or graphic matter:
 - (a) Upon an article or any of its containers or wrappers; or
 - (b) Accompanying the article;
- (28) "Legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";
- (29) "Meat Inspection Act" means the Federal Meat Inspection Act, 21 U.S.C. secs. 71 et seq., 34 Stat. 1260 et seq., including any amendments thereto;
- (30) "New drug" means:
 - (a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
 - (b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under prescribed conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;
- (31) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;
- (32) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity;
- (33) "Pesticide chemical" means any substance that alone in chemical combination, or in formulation with one or more other substances, is an "economic poison" within the meaning

of the Federal Insecticide, Fungicide and Rodenticide Act and amendments thereto, and that is used in the production, storage, or transportation of raw agricultural commodities;

- (34) "Poultry Products Inspection Act" means the Federal Poultry and Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq., Pub. L. 85-172, 71 Stat. 441, and any amendments thereto;
- (35) "Practitioner" means medical or osteopathic physicians, dentists, chiropodists, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices. "Practitioner" includes optometrists when administering or prescribing pharmaceutical agents authorized in KRS 320.240(12) to (14), advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042, and physician assistants when administering or prescribing pharmaceutical agents as authorized in *Section 32 of this Act* ~~[KRS 311.560(3) and (4)]~~;
- (36) "Prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, that is signed, given, or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (37) "Prescription blank" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;
- (38) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;
- (39) "Retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;
- (40) "Retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but does not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;
- (41) "Salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;
- (42) "Salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, reconditioning, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;
- (43) "Second or subsequent offense" has the same meaning as it does in KRS 218A.010;
- (44) "Secretary" means the secretary of the Cabinet for Health Services;

- (45) "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;
- (46) "Traffic" has the same meaning as it does in KRS 218A.010;
- (47) "Ultimate user" has the same meaning as it does in KRS 218A.010;
- (48) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts that are material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;
- (49) The representation of a drug in its labeling or advertisement as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body; and
- (50) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of those articles for sale, the sale, dispensing, and giving of those articles, and the supplying or applying of those articles in the conduct of any food, drug, or cosmetic establishment.

Section 36. The following KRS sections are repealed:

- 311.567 Authority for administrative regulations -- Physician Assistant Advisory Committee.
- 311.618 Committee's immunity for official acts.

Approved April 2, 2002