

CHAPTER 126**(HB 312)**

AN ACT relating to chiropractors.

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

Section 1. KRS 312.019 is amended to read as follows:

- (1) The board shall administer the provisions of this chapter and the administrative regulations promulgated by the board relating to the practice of chiropractic.
- (2) The board shall pass upon the qualifications of applicants for a license, certification, or registration to practice chiropractic. It shall examine, license, certify, register, and renew the license, certification, or registration of duly qualified applicants.
- (3) The board may deny, revoke, *limit, impose probationary conditions*, refuse to renew, or suspend any license, certification, or registration issued by it.
- (4) The board shall adopt a seal which shall be affixed to all licenses, certifications, and registrations issued by the board and to such other documents as the board deems necessary.
- (5) The board shall regulate the practice of chiropractic by persons licensed or certified by it and shall enforce the provisions of this chapter and the administrative regulations of the board. The board may investigate violations and cause the prosecution of persons violating the provisions of this chapter or the administrative regulations promulgated by the board.
- (6) The board may employ such personnel and incur such expenses as may be necessary for the performance of its duties and the enforcement of this chapter.
- (7) The board may prescribe and collect reasonable fees for the issuance and renewal of licenses, certifications, and registrations and the administration of examinations as provided in KRS 312.095 and 312.175.
- (8) The board may inspect at all reasonable times any chiropractic office or place where chiropractic services are performed *and inspect chiropractic records, a copy of which may be obtained by the board, and question all persons*.
- (9) The board may promulgate and from time to time amend administrative regulations, consistent with the provisions of this chapter and in accordance with the provisions of KRS Chapter 13A, governing the practice of chiropractic and the diagnosis and treatment of patients, the enforcement of this chapter and the proper performance of its duties, including but not limited to:
 - (a) A code of ethical conduct governing the practice of chiropractic;
 - (b) Requirements, standards, and examinations to determine the moral, physical, intellectual, educational, scientific, technical, and professional qualifications of applicants for licenses and certifications;
 - (c) Matters pertaining to the content and conduct of examinations;
 - (d) Matters pertaining to the operation and registration of chiropractic clinics;
 - (e) Matters pertaining to the practice and certification of chiropractic specialties by licensed doctors of chiropractic;

- (f) The type,~~and~~ character, **and location** of postgraduate study to be done by any licensee in order to comply with the provisions of KRS 312.175;
 - (g) Regulation of forms of advertising or solicitation that are false, misleading, or deceptive or otherwise in violation of this chapter. The board may require a seventy-two (72) hour rescission period for consumers responding to certain forms of solicitation or advertising proposing or offering a series or course of treatments. The board may require that advertisements or solicitations stating coverage available from third-party payors include a conspicuous notice that persons may be required to submit to an independent evaluation which may result in a determination that the all or part of the services are unreasonable or unnecessary;
 - (h) Establishing a recommended course of pre-chiropractic education to be completed prior to entry into chiropractic college and the establishment of a preceptorship program for students enrolled in accredited chiropractic colleges that conform to KRS 312.085 to meet the standards of accreditation of the Council on Chiropractic Education.
 - (i) Registration and regulation of chiropractic management consultants operating in Kentucky. The board may impose annual registration fees not to exceed two hundred dollars (\$200); and
 - (j) Establishing minimum standards for recordkeeping in chiropractic offices, the issuance of itemized statements, and requiring that any record or report include the name of the treating chiropractor.
- (10) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a chiropractor licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if a chiropractor is falsely accused.
- (11) 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, the 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 2. KRS 312.021 is amended to read as follows:

- (1) No licensed doctor of chiropractic shall advertise or hold himself out to the public ***in any manner which is false, deceptive, misleading, or*** as being especially qualified ***or advanced*** in any branch of the practice of chiropractic except as certified by the board.
- (2) The board shall identify by administrative regulation those specialties of the chiropractic for which certification may be granted and shall establish by administrative regulation the procedures for obtaining and maintaining such certification and the fees therefor.

Section 3. KRS 312.055 is amended to read as follows:

- (1) The board shall elect from its members a president, vice-president, and ***a secretary or*** an executive secretary. The executive secretary shall receive an annual salary to be established by the board by promulgation of administrative regulations.

- (2) Each member of the board shall receive his necessary traveling expenses and members other than the executive secretary shall receive a per diem not to exceed one hundred dollars (\$100) for each day they actually spend in the discharge of their official duties.

Section 4. KRS 312.065 is amended to read as follows:

The board shall hold meetings at least annually~~[to examine applicants and]~~ for the transaction of business. ***A majority of the board shall constitute a quorum for the transaction of business.*** The State Property and Buildings Commission shall, at the request of the board, provide an office at the capitol where meetings may be held. The president of the board or a majority of its members may for necessary or appropriate cause call other meetings by transmitting prior written notice of the time and place set for the meeting to all board members.~~[Twenty (20) days notice shall be presumed to be reasonable.]~~

Section 5. KRS 312.085 is amended to read as follows:

- (1) Any persons desiring to practice chiropractic in this state shall make application to the board,~~[through its executive secretary,]~~ in the form and~~[in the]~~ manner established by the board by the promulgation of administrative regulations~~[, at least thirty (30) days prior to any meeting held for examinations by the board]~~. Each applicant shall have satisfactorily completed not less than sixty (60) semester credit hours of study from a college or university accredited by the Southern Association of Colleges and ***Schools or other regional accrediting agencies as recognized by the United States Department of Education and the Council on Higher Education Accreditation, be***~~[Universities or an accrediting agency recognized by the Southern Association of Colleges and Universities or any successor to the powers of either and is]~~ a graduate of ***a***~~[an accredited chiropractic]~~ college ***or university*** accredited by the Council on Chiropractic Education or their successors, and which maintains a standard and reputability approved by the board, ***and meet the requirements of KRS 214.610 and KRS 214.615.***
- (2) The board may by administrative regulation ***require***~~[recommend]~~ a two-year pre-chiropractic course of instruction to be completed prior to entry into chiropractic college. The board may by administrative regulation establish a preceptorship program where students or graduates of accredited chiropractic colleges as stated in this section may work with and under the direction and supervision of a licensed doctor of chiropractic prior to the taking of the appropriate licensing examination.
- (3) Applications shall be~~[made and]~~ signed in applicant's own handwriting, and shall be sworn to and before an officer authorized to administer oaths, and shall recite the history of the applicant as to his educational ***experience***~~[advantages, his experience in matters pertaining to knowledge of the care of the sick]~~, his length of study of chiropractic, what collateral branches he has studied, the length of time he has been engaged in clinical practice, accompanying same with a diploma, or diplomas awarded to applicant by a college or colleges in which such studies were pursued. Certificates of attendance from the college or colleges from which he is a graduate, stating dates of matriculation, graduation, and number of months and hours in attendance shall accompany the application, with satisfactory evidence of good character and reputation. No license shall be issued to any person convicted of a felony unless he has been pardoned ***and approved by the board.***
- ~~[(4) Application for examination may be made on or before September 1, 1992, by persons who, prior to March 1, 1992, had submitted application for licensure to the board and who graduated between the years 1976 and 1991, from a chiropractic college which on January 1,~~

~~1992, is accredited by a specialized accrediting agency recognized by the United States Office of Education. The board shall administer an appropriate licensing examination prior to November 1, 1992. Persons licensed under this subsection shall complete twenty four (24) hours of continuing chiropractic education during the first year of their licensure.]~~

Section 6. KRS 312.095 is amended to read as follows:

There shall be paid to the ~~executive secretary of the~~ board by each applicant at the time of his application for a license, a **nonrefundable** fee not to exceed ~~four~~~~three~~ hundred dollars ~~(\$400)~~~~(\$300), which shall include the examination fee].~~

Section 7. KRS 312.145 is amended to read as follows:

- (1) ~~[All licenses issued by the board shall be in such form as the board may establish by promulgation of administrative regulations. Before]~~Any license ~~[is]~~ issued by the board ~~[, it]~~ shall be numbered ~~[and properly recorded by the executive secretary]~~. The **license** ~~[record]~~ shall be open to public inspection, and in all actions or proceedings in any court, a transcript, or any part thereof, certified ~~[by the executive secretary]~~ under the seal of the board to be a true copy, shall be entitled to admission in evidence.
- (2) The board may at any time inquire into the identity of any person claiming to hold a license to practice chiropractic in the state, and after due service of a notice in writing, require him to prove to the satisfaction of the board that he is the person authorized to practice under the license by virtue of which he claims the privilege to practice in this state. When the board finds that a person claiming to be the holder of a license to practice in this state is not in fact the person to whom the license was issued, it shall reduce its findings to writing and file them in its office, and such findings shall be prima facie evidence that the claimant does not hold a license to practice in this state.
- (3) Ownership or operation of a chiropractic facility within this state constitutes the practice of chiropractic requiring licensure ~~[of the owner or operator]~~. A chiropractic facility using an assumed name shall include the name of the owner **or operator** ~~[and facility]~~, and either the word "chiropractic" or "chiropractors."
- (4) ***By application and renewal, every chiropractor must annually provide the board with the name and address of each facility where the chiropractor practices. The chiropractor shall notify the board within ten (10) days of any change of address or change in practice location. All correspondence from the board shall be sent to the most recent address of record.*** ~~Chiropractic facilities utilizing chiropractors whose name is not used in the name of the facility shall register annually with the board and provide the name and address of the owner and the name and address of all doctors practicing in the facility. The board shall be notified within ten (10) days of any change. The board may establish by promulgation of administrative regulations an annual registration fee not to exceed two hundred fifty dollars (\$250)].~~

Section 8. KRS 312.150 is amended to read as follows:

- (1) Charges may be preferred by the board against the holder of a license to practice chiropractic in this state on any of the following grounds:
 - (a) That fraud, ***misrepresentation, concealment of material facts***, or deceit was used in ***obtaining or retaining*** ~~[securing]~~ the license;
 - (b) That the licensee no longer possesses a good moral character;

- (c) That the licensee has been convicted of a felony or violation of any law involving moral turpitude;
 - (d) That the licensee *solicits or advises patients utilizing false, deceptive, or misleading statements or information*~~[solicits patients through an agent];~~
 - (e) That the licensee is *impaired by*~~[addicted to the use of narcotic]~~ drugs or *alcohol to the extent that it may affect the health, welfare, or safety of patients*~~[is a chronic alcoholic];~~
 - (f) That the licensee is in any way guilty of any deception, misrepresentation, fraud, or unethical conduct in the practice of chiropractic;
 - (g) That the licensee has violated any of the provisions of this chapter, or any of the administrative regulations of the board;
 - (h) That the licensee failed to attend and complete annual continuing chiropractic education courses as provided in KRS 312.175;~~[or]~~
 - (i) That the licensee failed to provide *a complete copy of the patient's medical records or an itemized statement* to the patient~~[immediately]~~ upon request, *pursuant to KRS 422.317, within ten (10) business days; or*
 - (j) *That the chiropractor failed to provide notice of a change in address or change in the name and address of the facility where the chiropractor practices as required by KRS 312.145(4).*
- (2) Unprofessional conduct shall include any departure or the failure to conform to the minimal standards of acceptable chiropractic practice or the willful or careless disregard for the health, welfare, or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractor:
- (a) Gross ignorance of, or incompetence in, the practice of chiropractic;
 - (b) Performing unnecessary services;
 - (c) Charging a patient an unconscionable fee or charging for services not rendered;
 - (d) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques, including having patients enter into a contract for a course of treatment;
 - (e) Perpetrating fraud upon patients, third-party payors, or others, relating to the practice of chiropractic, including violations of the federal *Medicaid and Medicare laws*~~[law];~~
 - (f) Advertising that the licensee shall accept for services rendered assigned payments from any third-party payor as payment in full, if the effect is to give the impression of eliminating the need for payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan; or advertising a fee or charge for a service or treatment different from the fee or charge the licensee submits to a third-party payor for that service of treatment. The licensee shall attach to any claim form submitted to any third-party payor a copy of any coupon or a summary of the terms of any discount given;
 - (g) Accepting for services rendered assigned payments from any third-party payor as payment in full, if the effect is to eliminate the need for payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan, or

collecting a fee or charge the licensee submits to a third-party payor for that service or treatment. However, in instances where the intent is not to collect excessive remuneration from a third-party payor but rather to provide services at a reduced rate to a patient unable to afford the deductible or copayment, the services may be performed for a lesser charge or fee. The third-party payor shall be informed by the licensee of the reduced charge; or

- (h) Conviction of a misdemeanor offense under KRS Chapter 510 involving a patient while the patient was under the care of the chiropractor, or a felony offense under KRS Chapter 510, 530.064, or 531.310, or the chiropractor having been found by the board to have had sexual contact as defined in KRS 510.010 with a patient while the patient was under the care of the chiropractor.
- (3) Upon receipt and due consideration of any charges, the board upon an affirmative vote ~~of a majority of its members~~ shall determine whether the nature and quality of the charges are such that further investigation or initiation of disciplinary proceedings against the charged licensee is indicated. ***If disciplinary proceedings are not warranted, the charges shall be dismissed with or without prejudice.*** If the board determines that disciplinary proceedings are appropriate, ***the case may be resolved informally by agreed order or*** ~~the charges shall be set down~~ for hearing to be conducted in accordance with KRS Chapter 13B.
- (4) Except for revocation for nonrenewal, no license shall be revoked or suspended without ***an opportunity for*** a hearing. The board may at any time proceed against a licensee on its own initiative either on the basis of information contained in its own records or on the basis of information obtained through its informal investigation. ~~When a formal complaint verified by affidavit is filed with the board by a responsible citizen or organization and containing allegations that if true would warrant suspension or revocation of a license, the board shall proceed against the licensee within three (3) months.~~
- (5) If the board substantiates that sexual contact occurred between the chiropractor and a patient while the patient was under the care of or in a professional relationship with the chiropractor, the chiropractor's license may be revoked or suspended with mandatory treatment of the chiropractor as prescribed by the board. The board may require the chiropractor to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

SECTION 9. A NEW SECTION OF KRS CHAPTER 312 IS CREATED TO READ AS FOLLOWS:

- (1) ***Subpoenas for witnesses, whose evidence is deemed material to an investigation or hearing authorized by KRS 312.150 and this section, may be issued by the board or any officer of the board and under the seal of the board, commanding the witness to appear before the board at a time and place to be named, and to bring books, records, and documents that may be specified, or to submit books, records, and documents for inspection. Subpoenas may be served by any sheriff or deputy.***
- (2) ***When any witness who has been served with a subpoena fails or refuses to appear at the time and place named; or fails or refuses to answer any lawful question propounded; or fails to produce the books, records, or documents required; or is guilty of disorderly or contumacious conduct at the hearing, the board may invoke the aid of the Franklin Circuit Court and any order or subpoena of the court requiring the attendance and***

testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in the state.

- (3) *Witnesses shall be entitled to the same fees and mileage as they may be entitled to by law for attending as witnesses in a Circuit Court.*
- (4) *Witnesses who testify under subpoena shall be entitled to the same protection and immunities as witnesses in judicial proceedings.*

Section 10. KRS 312.160 is amended to read as follows:

- (1) Any *licensed* person ~~who~~~~[whose license]~~ has been *disciplined after a hearing*~~[revoked or suspended]~~ shall have the right to appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B. If the person ~~who~~~~[whose license]~~ has been *disciplined*~~[revoked or suspended]~~ fails to appeal *within thirty (30) days after the final order is mailed or personally served*, the final order of the board shall be final.
- (2) *Any disciplinary matter shall be reported to the Healthcare Integrity and Protection Data Bank or to the board's authorized agent*~~[The action of the board shall be recorded in the same manner as licenses are recorded, and the name of the person whose license is revoked or suspended shall be stricken either indefinitely or for the period of the suspension from the list of license holders, and he shall be disqualified from practicing chiropractic in this state until the revocation or suspension is terminated].~~

Section 11. KRS 312.163 is amended to read as follows:

- (1) In addition to the other powers granted to the board under this chapter, the board may, in connection with any person whom the board, after a hearing adjudges unqualified or whom the board, after a hearing, finds to have performed one (1) or more of the acts described in KRS 312.150:
 - (a) Revoke the license to practice;
 - (b) Suspend the license to practice~~[for a period not to exceed three (3) years];~~
 - (c) Publicly reprimand or censure the person;
 - (d) Place the person on probation for a period and upon the terms and conditions that the board may establish~~[by promulgation of administrative regulations];~~~~[and]~~
 - (e) Require payment of all costs of proceedings resulting *from*~~[in]~~ the disciplinary action; *and*
 - (f) *Limit the license to practice.*
- (2) The board may also impose a~~[civil]~~ penalty not exceeding *five*~~[two]~~ thousand dollars ~~(\$5,000)~~~~(\$2,000)~~ for each separate violation~~[, the amount of the civil penalty to be fixed so as to deprive the doctor of chiropractic of any economic advantage gained by reason of the violation charged or to reimburse the board for the cost of the investigation and proceeding].~~
- (3) A licensee subject to any disciplinary proceeding under this chapter shall be afforded an administrative hearing conducted in accordance with KRS Chapter 13B and may appeal any final order of the board to the Franklin Circuit Court.

Section 12. KRS 312.175 is amended to read as follows:

- (1) *Each person*~~[After July 14, 1992, all persons]~~ licensed to practice chiropractic in this state shall, on or before the first day of March, annually~~[hereafter]~~ renew his license and pay a

renewal fee of not more than one hundred dollars (\$100) for each *inactive*~~[nonresident]~~ licensee and not more than *five*~~[two]~~ hundred dollars ~~(\$500)~~~~(\$200)~~ for each *active*~~[resident]~~ licensee each year to the board. In addition to the payment of the renewal fee, the *active* licensee~~[sø]~~ applying for a license renewal shall furnish to the board satisfactory evidence that he has attended an educational program in the year preceding each application for renewal. Satisfactory evidence of attendance of postgraduate study at an institution approved by the board shall be considered equivalent. Any education shall include completion of the course described in KRS 214.610(1) at least one (1) time every ten (10) years, but the board may in its discretion require completion of the course more frequently. Provided, however, that licenses may be renewed by the board, at its discretion, and the applicant may be excused from paying the renewal fee or attending the annual educational program, or both, in instances where the applicant submits an affidavit to the board evidencing that he, for good cause assigned, suffered a hardship which prevented the applicant from renewing the license or attending the educational program at the proper time.

- (2) The~~[executive secretary of the]~~ board shall send a written notice to every person holding a valid license to practice chiropractic within this state at least *forty-five (45)*~~[thirty (30)]~~ days prior to the first day of March in each year, directed to the last known address of the licensee, and shall enclose with the notice proper blank forms for application for annual license renewal. The *board*~~[executive secretary]~~ shall, within *forty-five (45)*~~[thirty (30)]~~ days, notify every person failing to renew his license after it is due that he is delinquent and is subject to a late penalty of *three*~~[one]~~ hundred dollars ~~(\$300)~~~~(\$100)~~. If the licensee fails to renew his license within *forty-five (45)*~~[ninety (90)]~~ days after the mailing of the delinquent notice then his license shall be revoked for nonrenewal. Any licensee whose license has been revoked for failure to renew his license may have his license restored upon the payment of a restoration fee not to exceed *five*~~[two]~~ hundred dollars ~~(\$500)~~~~(\$200)~~ for each delinquent year or any part thereof in addition to the renewal fee of not more than *five*~~[three]~~ hundred dollars ~~(\$500)~~~~(\$300)~~ and upon presentation of satisfactory evidence of postgraduate study of a standard approved by the state board or upon a showing that he is an exception as provided for in subsection (1) of this section.~~[Any licensee whose license has been revoked for more than four (4) years for failure to renew his license may have his license restored after satisfactorily passing the examination as provided in KRS 312.115 and upon payment of the regular application fee.]~~
- (3) *Any licensee whose license has been revoked for less than four (4) years, may not apply for a license pursuant to KRS 312.085. The licensee may only apply for restoration pursuant to subsection (2) of this section.*
- (4) *Any licensee whose license has been revoked for more than four (4) years may apply for a license by examination, as long as the licensee pays a restoration fee not to exceed five hundred dollars (\$500) for each delinquent year, or any part thereof, in addition to the renewal fee of not less than five hundred dollars (\$500) and not more than three thousand dollars (\$3,000).*

Section 13. The following KRS section is repealed:

312.135 Filing license with county clerk.

Approved March 18, 2003