

## CHAPTER 50

## ( HB 137 )

AN ACT relating to the licensure of health care professionals who use radiation for imaging and therapy and making an appropriation therefor.

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

➔SECTION 1. KRS CHAPTER 311B IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *It is the declared policy of the General Assembly of Kentucky that the practice of medical imaging, radiation therapy, and related occupations should be regulated and controlled as provided by this chapter and by the administrative regulations of the board in order to protect and safeguard the health and safety of the citizens of the Commonwealth of Kentucky.*
- (2) *Prior to the effective date of this Act, the Cabinet for Health and Family Services has exercised effective oversight over the fields of medical imaging and radiation therapy, but it is the intent of the General Assembly that, as of the effective date of this Act:*
  - (a) *These professions shall be governed by a peer-reviewed, practitioner-based body; and*
  - (b) *The board as established in this chapter is the best means to carry out this purpose.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

*As used in this chapter, unless the context clearly requires otherwise:*

- (1) *"Accredited educational program" means a program that is approved by a national organization acceptable to the board to provide education in medical imaging or radiation therapy;*
- (2) *"Actively employed" means an individual who is appropriately credentialed and currently employed as an advanced imaging professional, medical imaging technologist, radiation therapist, an educator or administrator in any of these disciplines, or a limited X-ray machine operator;*
- (3) *"Advanced imaging professional" means an individual who is credentialed by a nationally recognized certification organization that is recognized by the board;*
- (4) *"Authorized user" means a physician, dentist, or podiatrist identified on a radioactive materials license that authorizes the medical use of radioactive materials if the license was issued by:*
  - (a) *The Cabinet for Health and Family Services;*
  - (b) *The U.S. Nuclear Regulatory Commission; or*
  - (c) *Another U.S. Nuclear Regulatory Commission agreement state;*
- (5) *"Board" means the Kentucky Board of Medical Imaging and Radiation Therapy;*
- (6) *"Credentialed" means someone who is certified and registered by an appropriate national organization that is recognized by the board;*
- (7) *"Continuing education" means a learning activity that is planned, organized, and administered to enhance the professional knowledge and skills of a licensed individual of medical imaging or radiation therapy to provide services for patients, the public, or the medical profession;*
- (8) *"Licensed practitioner" or "licensed practitioner of the healing arts" means a person licensed in Kentucky to practice medicine, osteopathy, dentistry, chiropractic, podiatry, or veterinary medicine;*
- (9) *"Limited X-ray machine operator" means an individual who performs limited radiographic procedures in facilities where contrast studies, fluoroscopic, nuclear medicine, or radiation therapy procedures are not performed;*
- (10) *"Medical imaging technologist" means an individual who has completed an accredited educational program in radiography, nuclear medicine, or other imaging modality recognized by the board and who is licensed and granted privileges under this chapter. Only an individual licensed as a medical imaging technologist shall be employed to perform medical imaging at a facility where contrast studies, fluoroscopic, nuclear medicine, or radiation therapy procedures are performed;*

- (11) *"National organization" means:*
- (a) *The American Society of Radiologic Technologists;*
  - (b) *The Nuclear Medicine Technology Certification Board;*
  - (c) *The American Registry of Radiologic Technologists;*
  - (d) *The Society of Nuclear Medicine Technologist Section;*
  - (e) *The Joint Review Committee on Education in Radiologic Technology;*
  - (f) *The Joint Review Committee on Educational Programs in Nuclear Medicine Technology;*
  - (g) *The American College of Radiology; or*
  - (h) *Another national organization recognized by the board;*
- (12) *"Nuclear medicine technologist" means an individual who is authorized to prepare and administer radiopharmaceuticals, pharmaceuticals, and radionuclides under the direction of an authorized user to perform nuclear medicine procedures for diagnostic and therapeutic purposes;*
- (13) *"Post-primary certification" means an individual who has primary certification and has been awarded post-primary certification by a national organization that has been recognized by the board;*
- (14) *"Primary certification" means an individual who has successfully completed a formal educational program and certification in radiography, nuclear medicine, radiation therapy, or other modality recognized by the board;*
- (15) *"Radiation therapist" means an individual who:*
- (a) *Has completed an accredited educational program in radiation therapy;*
  - (b) *Is licensed by the board; and*
  - (c) *Is authorized to utilize ionizing radiation-generating equipment and sources of radiation for the planning, localization, and delivery of therapeutic procedures on human beings; and*
- (16) *"Radiographer" means an individual who is authorized to use ionizing radiation-generating equipment to perform a comprehensive scope of diagnostic imaging procedures and is responsible for the operation of radiation-generating equipment, protecting the patient and staff from unnecessary radiation, and selecting the appropriate exposure to produce diagnostic images with the lowest reasonable exposure.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Board for Medical Imaging and Radiation Therapy is hereby created to promote, preserve, and protect the public health, safety, and welfare of the citizens of the Commonwealth of Kentucky by regulating and licensing individuals who use ionizing or nonionizing radiation as advanced imaging professionals, medical imaging technologists, radiographers, radiation therapists, nuclear medicine technologists, limited X-ray machine operators, or any combination of professions licensed under this chapter. The board shall consist of nine (9) members appointed by the Governor, with the following qualifications:*
- (a) *Two (2) members shall be licensed radiographers whose primary work responsibilities are related to general diagnostic radiography;*
  - (b) *Two (2) members shall be licensed radiographers with a post-primary certification and whose primary work responsibilities are related to that post-primary certification;*
  - (c) *One (1) member shall be a licensed nuclear medicine technologist;*
  - (d) *One (1) member shall be a licensed radiation therapist;*
  - (e) *One (1) member shall be a licensed limited X-ray machine operator;*
  - (f) *One (1) member shall be a licensed medical imaging technologist or therapist who serves as an educator in an accredited program or as an administrator in a medical imaging or radiation therapy department; and*
  - (g) *One (1) member shall be an individual at-large from the general public with no family or business relation to health care but with an interest in the rights of consumers of health services.*

- (2) *All board members, except the at-large member, shall have at least five (5) years of experience in their respective areas of certification or licensure and shall maintain active registry or certification and Kentucky licensure in medical imaging or radiation therapy during the term as a board member. Each board member shall be a resident of Kentucky or actively employed in medical imaging or radiation therapy in Kentucky, and shall be in good standing with the board.*
- (3) (a) *By May 1 of years in which terms expire, nominations of individuals for appointment to the board shall be submitted to the Governor and may be made by citizens of the Commonwealth of Kentucky through the Kentucky Society of Radiologic Technologists, the Kentucky Society of Nuclear Medicine Technologists, the board, or other professional imaging or radiation therapy organizations that are recognized by the board;*
- (b) *No two (2) board members shall be residents of the same county; and*
- (c) *A minimum of two (2) names per appointment shall be submitted to the Governor.*
- (4) *The Governor shall make each appointment by September 1 for terms beginning November 1 of that same year. The initial terms of appointment shall be staggered with five (5) members appointed for four (4) years and four (4) members appointed for two (2) years. Thereafter, members shall be appointed to the board for terms of four (4) years, expiring on October 31 of the fourth year. A board member may serve two (2) consecutive appointments. After a second consecutive appointment, that individual may not be reappointed until at least one (1) full year has passed.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall meet at least two (2) times annually and may meet at other times as needed. Special meetings shall be called by the chair, or by written petition of three (3) board members to the chair of the board.*
- (2) *At the first meeting each year, the board shall elect by majority a chair to preside at the meetings for a one (1) year term. A vice-chair shall be elected by the board to preside over board meetings in the chair's absence.*
- (3) *The board chair shall establish an agenda to conduct business for each meeting. The agenda shall be distributed to board members at least two (2) weeks prior to the scheduled meeting. Specific items for consideration shall be submitted at least thirty (30) days prior to the next board meeting.*
- (4) *A majority of the board members shall constitute a quorum for the transaction of necessary business.*
- (5) *Vacancies shall be filled in the manner of the original appointment for the length of the unexpired portion of the term only. Appointment to a vacancy for more than two (2) years shall constitute a full term of appointment.*
- (6) *Upon recommendation by a majority of the board members and after notice and a hearing, the Governor may remove any member for failure to maintain the qualifications as a board member, incompetence, neglect of duty, or malfeasance in office. Any board member removed under this subsection shall be entitled to appeal the removal in the Franklin Circuit Court.*
- (7) *There shall be no liability on the part of, and no action for damages against, any current or former board member, representative, agent, or employee of the board, when the person is acting with ordinary care, is functioning within the scope of board duties, is acting without malice, and has the reasonable belief that the actions taken by him or her are warranted by law.*
- (8) *Each member of the board shall receive, in addition to travel, hotel, and other necessary expenses, a reasonable amount as determined by the board through the promulgation of administrative regulations for each day the member is engaged in the discharge of official duties at scheduled or called meetings of the board.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

*The board shall:*

- (1) *Administer and enforce this chapter. The board alone shall have this authority;*
- (2) *Promulgate administrative regulations to administer and enforce this chapter;*
- (3) *Issue and renew the licenses of duly qualified applicants, following procedures established by the board through the promulgation of administrative regulations;*

- (4) *Determine and enforce continuing education requirements and establish guidelines for approval of continuing education;*
- (5) *Approve accredited educational programs of imaging or radiation therapy and monitor compliance with the educational standards established by the individual disciplines, as recognized by the board;*
- (6) *Designate funds for scholarships, program development, or continued education;*
- (7) *Investigate suspected or alleged violations of this chapter, conduct hearings and record minutes, resolve the allegations and, if appropriate, impose sanctions or penalties; and*
- (8) *Submit an annual report to the Governor and the Legislative Research Commission that provides information concerning the board's work regarding licensure of professionals under this chapter and that lists all hearings conducted by the board and the decisions rendered.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

*The board may:*

- (1) *Hire an executive director, set compensation appropriate for the administrative responsibilities of the position, and delegate to the executive director those duties for daily operation;*
- (2) *Appoint ad hoc committees, if necessary, to conduct the business of the board;*
- (3) *Hire legal counsel as needed;*
- (4) *Employ an administrative assistant or assistants to assist the executive director in the completion of daily activities and responsibilities of this chapter; and*
- (5) *Employ or contract with other persons as needed to carry out the work of the board.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director shall have demonstrated administrative experience relative to budget, management, organizational abilities, and professional communication. The executive director shall:*
  - (a) *Be a licensed medical imaging technologist or radiation therapist;*
  - (b) *Have a minimum of a bachelor's degree; and*
  - (c) *Meet the qualifications of a board member as required under subsection (2) of Section 3 of this Act.*
- (2) *The executive director shall implement and oversee the licensure process of advanced imaging professionals, medical imaging technologists, radiographers, radiation therapists, nuclear medicine technologists, and limited X-ray machine operators as defined by the board. The executive director shall at a minimum:*
  - (a) *Receive and evaluate applications for licenses;*
  - (b) *Document continuing education by licensees;*
  - (c) *Report suspected allegations of violations of this chapter to the board;*
  - (d) *Serve as corresponding secretary for the board;*
  - (e) *Supervise and evaluate administrative assistants and other office staff hired or contracted by the board;*
  - (f) *Assist the board chair in coordinating regular and special meetings and agendas;*
  - (g) *Maintain records of the actions of the board;*
  - (h) *Obtain an annual audit of the funds received and disbursed;*
  - (i) *Prepare and submit reports as needed;*
  - (j) *Serve as liaison between educational programs and the board; and*
  - (k) *Serve as liaison between the board and:*
    1. *State and national professional and accrediting organizations; and*
    2. *Other Kentucky boards and agencies.*

- (3) *The executive director and other persons designated by the board shall be bonded by the state in an amount as determined by the board to be approved by the State Treasurer for the faithful performance of related duties.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

*The board shall recognize and enforce the current rules and regulations, practice standards, scopes of practice, and ethical standards for the nationally-recognized professional organizations and certifying bodies for technologists and therapists regulated by this chapter.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall engage or attempt to engage in the operation of radiation-producing equipment or the administration of ionizing radiation for the purpose of medical imaging or radiation therapy in Kentucky unless licensed in accordance with the provisions of this chapter.*
- (2) *This chapter shall not apply to any individual licensed in the Commonwealth of Kentucky as a licensed practitioner of the healing arts, any student enrolled in an approved educational program in medical imaging technology or radiation therapy, or any employee of the federal government engaged in the performance of official duties within the state.*
- (3) *Misuse of regulated credentials shall result in disciplinary action by the board in addition to possible action by the credentialing agency.*
- (4) *Nothing in this chapter or in the administrative regulations promulgated by the board pursuant to this chapter shall be interpreted to limit or restrict a licensed health care practitioner or provider from engaging in the full scope of practice authorized by the license for that person's profession, training, or services.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

- (1) *The following individuals are required to apply for and receive a license from the Commonwealth of Kentucky before performance of any procedures utilizing radiation for either medical imaging or radiation therapy:*
- (a) *Advanced imaging professionals;*
  - (b) *Medical imaging technologists;*
  - (c) *Radiographers;*
  - (d) *Radiation therapists;*
  - (e) *Nuclear medicine technologists; and*
  - (f) *Limited X-ray machine operators.*
- (2) *Qualifications for the above categories shall be established by the board through the promulgation of administrative regulations. The board may also identify other specialties or categories of duties consistent with this chapter through the promulgation of administrative regulations.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

- (1) *An applicant for licensure as an advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, nuclear medicine technologist, or limited X-ray machine operator shall file an application in a format prescribed by the board.*
- (2) *Licensees shall display or have available an original current license at any place of employment. It shall be unlawful for any person to display a license in an effort to misrepresent his or her qualifications. An individual who no longer meets the licensure requirements shall not display a license nor purport to have the qualifications.*
- (3) *Licensees shall meet continuing education requirements.*
- (4) *Licenses shall be renewed or reinstated in accordance with the requirements set out by the board.*
- (5) *Licenses may be placed on inactive status for those who are not actively employed, as defined by this chapter. To reactivate an inactive license, the applicant shall submit a new application and required fee and meet all requirements for reactivation.*

- (6) *The requirements of this section shall be established by the board through the promulgation of administrative regulations.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

*The board shall through the promulgation of administrative regulations set appropriate fees and penalties for:*

- (1) *The application process;*
- (2) *Verification of qualifications;*
- (3) *Issuance and renewal of licenses for advanced imaging professionals, medical imaging technologists, radiographers, radiation therapists, nuclear medicine technologists, and limited X-ray machine operators;*
- (4) *Duplicate licenses;*
- (5) *Home study courses for limited X-ray machine operators;*
- (6) *Late renewals or reinstatements;*
- (7) *Violations;*
- (8) *Checks issued on accounts with insufficient funds; and*
- (9) *Any other actions as deemed appropriate by the board.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

- (1) *On behalf of the board, the executive director shall receive and account for all moneys collected pursuant to the provisions of this chapter, or the administrative regulations promulgated pursuant to this chapter, and shall deposit all such moneys into the State Treasury, to be credited to a trust and agency fund which is hereby created for the purpose of defraying the costs and expenses of the administration of this chapter in the manner provided for other similar licensure agencies and boards of the Commonwealth.*
- (2) *These moneys shall be used for the reimbursement of board members for actual and necessary expenses incurred in the performance of their official duties, the compensation of all of the employees of the board, and payment of all other operational expenses incurred in fulfilling the board's duties as described in this chapter and administrative regulation, and are hereby appropriated for those purposes.*
- (3) *No part of this fund shall revert to the general fund of the Commonwealth.*
- (4) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this chapter.*
- (5) *Any interest earnings of the fund shall become a part of the fund and shall not lapse.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

- (1) *Normal licensure fees shall be waived for persons who provide the board with documentation of active duty in the United States Armed Forces.*
- (2) *Upon release from active duty, a licensee shall not be required to seek reinstatement of an expired license if the licensee seeks renewal of the license within thirty (30) days by submitting the appropriate fees and documentation of continuing education requirements.*
- (3) *Upon release from active duty, a licensee may renew an unexpired license according to the usual cycle.*
- (4) *Other situations related to military service will be evaluated on an individual basis by the board.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

*It shall be unlawful for any person to:*

- (1) *Claim to be a licensee or perform medical imaging or therapeutic procedures unless licensed under this chapter;*
- (2) *Manipulate equipment that produces ionizing radiation or administer radiopharmaceuticals unless licensed under this chapter;*

- (3) *Knowingly employ an advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, nuclear medicine technologist, or limited X-ray machine operator unless that individual is licensed under the provisions of this chapter;*
- (4) *Be an advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, nuclear medicine technologist, limited X-ray machine operator, employer of one of these individuals, or any other person who, having knowledge of a situation listed in paragraphs (a) to (j) of this subsection, refrains from reporting to the board a licensee who:*
  - (a) *Has been convicted of any felony or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States;*
  - (b) *Is suspected of fraud or deceit in procuring or attempting to procure a license or credential to practice in his or her discipline;*
  - (c) *Is suspected of negligently or willfully acting in a manner inconsistent with professional practice relative to his or her discipline;*
  - (d) *Is suspected of being unfit or incompetent to practice by reason of negligence or other causes, included but not limited to being unable to practice with reasonable skill or safety;*
  - (e) *Has a license or credential to practice medical imaging or radiation therapy denied, suspended, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license or credential to be denied, suspended, revoked, or otherwise disciplined in this Commonwealth;*
  - (f) *Is practicing medical imaging or radiation therapy, as it pertains to this chapter, without a current active license or valid temporary license issued by the board;*
  - (g) *Is suspected of misusing or misappropriating any drugs placed in the licensee's custody to be administered to or used by others;*
  - (h) *Is suspected of falsely or negligently making incorrect entries or failing to make essential entries on essential records;*
  - (i) *Is suspected of abusing controlled substances, prescription medications, illegal substances, or alcohol; or*
  - (j) *Is suspected of violating any provision of this chapter.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

*The board may deny, revoke, or suspend the license of an individual who:*

- (1) *Has engaged in conduct relating to his or her profession that is likely to deceive, defraud, or harm the public;*
- (2) *Has engaged in alcohol and other drug abuse as defined in KRS 222.005;*
- (3) *Develops a physical or mental disability or other condition that makes continued practice or performance of his or her duties potentially dangerous to patients or the public;*
- (4) *Performs procedures under or represents as valid to any person a license:*
  - (a) *Not issued by the board;*
  - (b) *Containing unauthorized alterations; or*
  - (c) *Containing changes that are inconsistent with board records regarding its issuance;*
- (5) *Has been convicted of a crime that is a felony under the laws of this state or convicted of a felony in a federal court, unless the individual has had all civil rights restored;*
- (6) *Exhibits significant or repeated failure in the performance of professional duties; or*
- (7) *Fails to comply with any administrative regulation of the board.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall notify any licensee of alleged offenses. The notice shall include sufficient detail to reasonably apprise the person of the allegations, the nature of the offense charged, or both.*

- (2) *The board shall furnish the licensee with written notice of the date, time, and place of a hearing.*
- (3) *A licensee who fails to respond to a notice of a hearing or fails to attend the hearing shall have the license revoked immediately.*
- (4) *The board shall notify any employer or employers and any appropriate credentialing organization if a license is suspended or revoked.*
- (5) *A licensee may request a conference and appeal the board's action.*
- (6) *All actions and proceedings under this section shall be conducted in accordance with KRS Chapter 13B.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall assess civil penalties authorized by Section 19 of this Act against an individual or licensee who performs diagnostic or therapeutic procedures without a valid license.*
- (2) *Prior to assessing civil penalties, the board shall confirm the violation of the requirements by any of the following:*
  - (a) *Observing the violation;*
  - (b) *Obtaining records, documents, or other physical evidence;*
  - (c) *Obtaining statements from either the employer or the employee that confirm the existence of the violation; or*
  - (d) *Obtaining statements from third parties, such as patients or co-workers, that corroborate the allegation that a violation has occurred.*
- (3) *Civil penalties shall be assessed against individuals who perform diagnostic or therapeutic procedures without a valid license as follows:*
  - (a) *Failure to apply for an initial license by an individual who is fully qualified for licensure at the time the violation is discovered shall be assessed a civil penalty plus the license application fee;*
  - (b) *Failure to apply for renewal by an individual who would be eligible for renewal of a license but would not currently qualify due to insufficient continuing education at the time the violation is discovered shall be assessed a civil penalty plus the license renewal fee;*
  - (c) *Performance of a diagnostic or therapeutic procedure requiring licensure by an individual who is not qualified for a license at the time the violation is discovered shall be assessed a civil penalty; and*
  - (d) *Civil penalties for repeating the above offenses shall be doubled. Each day the violation occurs shall count as a separate repeat offense.*
- (4) *Civil penalties, double the amount assessed against the licensee, shall also be assessed against the employer of the individual without a valid license pursuant to subsection (3) of this section.*

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 311B IS CREATED TO READ AS FOLLOWS:

*Any person who fails to comply with any provisions of this chapter, any administrative regulations promulgated under this chapter, or any valid order of the board shall be fined a reasonable amount as determined by the board through the promulgation of administrative regulations. Each day of violation or noncompliance shall constitute a separate offense.*

➔Section 20. The following KRS sections are repealed:

211.870 Regulation of radiation sources.

211.890 Application fees.

211.993 Penalties.

➔Section 21. The Governor shall make the initial appointments to the board by consulting with experts in the field as appropriate. The initial appointments made under subsections (1)(a), (1)(b), (1)(d), (1)(e), and (1)(f) of Section 3 of this Act shall each be individually made from a separate list of at least two names for each appointment provided by the Kentucky Society of Radiologic Technologists. The initial appointment made under subsection (1)(c) of Section 3 of this Act shall be made from a list of three names provided by the Kentucky Society of Nuclear Medicine Technologists.



**Signed by Governor April 11, 2012.**