

201 KAR 8:540. Dental practices and prescription writing.

RELATES TO: KRS 218A.205(3), 313.060, 313.085, 422.317, 42 U.S.C. 300ee-2 note
STATUTORY AUTHORITY: KRS 218A.205(3), 313.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 300ee-2 note requires each state to institute the guidelines issued by the United States Centers for Disease Control and Prevention or guidelines that are equivalent to those promulgated by the Centers for Disease Control and Prevention concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures. KRS 313.060(1) requires the board to promulgate administrative regulations relating to dental practices that shall include minimal requirements for documentation and Centers for Disease Control and Prevention compliance. This administrative regulation establishes requirements for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures and includes minimal requirements for documentation and Centers for Disease Control and Prevention compliance.

Section 1. Definitions. (1) "Invasive procedure" means a procedure that penetrates hard or soft tissue.

(2) "Oral surgery" means any manipulation or cutting of hard or soft tissues of the oral or maxillofacial area and associated procedures, by any means, as defined by the American Dental Association, utilized by a dentist licensed by 201 KAR Chapter 8 and within the dentist's scope of training and practice.

Section 2. Minimum Documentation Standards for all Dental Patients. (1) Each patient's dental records shall be kept by the dentist for a minimum of:

- (a) Seven (7) years from the date of the patient's last treatment;
 - (b) Seven (7) years after the patient's eighteenth (18) birthday, if the patient was seen as a minor; or
 - (c) Two (2) years following the patient's death.
- (2) Each dentist shall comply with KRS 422.317 regarding the release of patient records.
- (3) The dentist shall keep accurate, readily accessible, and complete records which include:
- (a) The patient's name;
 - (b) The patient's date of birth;
 - (c) The patient's medical history and documentation of the physical exam of the oral and perioral tissues;
 - (d) The date of treatment;
 - (e) The tooth number, surfaces, or areas to be treated;
 - (f) The material used in treatment;
 - (g) Local or general anesthetic used, the type, and the amount;
 - (h) Sleep or sedation dentistry medications used, the type, and the amount;
 - (i) Diagnostic, therapeutic, and laboratory results, if any;
 - (j) The findings and recommendations of the dentist and a description of each evaluation or consultation, if any;
 - (k) Treatment objectives;
 - (l) All medications, including date, type, dosage, and quantity prescribed or dispensed; and
 - (m) Any post treatment instructions.

Section 3. Prescription Writing Privileges. (1) In accordance with KRS 313.035, a dentist may prescribe any drug necessary within the scope of the dentist's practice if the dentist:

- (a) Is licensed pursuant to 201 KAR 8:532;
- (b) Has obtained a license from the Drug Enforcement Administration; and
- (c) Has enrolled with and utilizes the Kentucky All Schedule Prescription Electronic Reporting System as required by KRS 218A.202.

(2) A dentist shall not compound any scheduled drugs or dispense any Schedule I, Schedule II, or Schedule III controlled substances containing Hydrocodone for use by the patient outside the office setting.

Section 4. Prescribing of Controlled Substances by Dentist. (1) Prior to the initial prescribing of any controlled substance, each dentist shall:

(a) Except as provided in subsection (2) of this section, and review a KASPER report for all available data on the patient;

(b) Document relevant information in the patient's record;

(c) Consider the available information to determine if it is medically appropriate and safe to prescribe a controlled substance;

(d) Obtain a complete medical history and conduct a physical examination of the oral or maxillofacial area of the patient and document the information in the patient's medical record;

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

(f) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(g) Obtain written consent for the treatment.

(2) A dentist shall not be required to obtain and review a KASPER report if:

(a)1. The dentist prescribes a Schedule III controlled substance or one (1) of the Schedule IV controlled substances listed in subsection (3) of this section after the performance of oral surgery; and

2. No more than a seventy-two (72) hour supply of the controlled substance is prescribed;

(b) The dentist prescribes or dispenses a Schedule IV or V controlled substance not listed in subsection (3) of this section; or

(c)1. The dentist prescribes pre-appointment medication for the treatment of procedure anxiety; and

2. The prescription is limited to a two (2) day supply and has no refills.

(3) A dentist shall obtain and review a KASPER report before initially prescribing any of the following Schedule IV controlled substances:

(a) Ambien;

(b) Anorexics;

(c) Ativan;

(d) Klonopin;

(e) Librium;

(f) Nubain;

(g) Oxazepam;

(h) Phentermine;

(i) Soma;

(j) Stadol;

(k) Stadol NS;

(l) Tramadol;

(m) Versed; and

(n) Xanax.

(4) A dentist may provide one (1) refill within thirty (30) days of the initial prescription for the same controlled substance for the same amount or less or prescribe a lower schedule drug for the same amount without a clinical reevaluation of the patient by the dentist.

(5) A patient who requires additional prescriptions for a controlled substance shall be clinically reevaluated by the dentist and the provisions of this section, shall be followed.

Section 5. Penalties and Investigations. (1) A licensee convicted of a felony offense related to prescribing and dispensing of a controlled substance shall, at a minimum be permanently banned from prescribing or dispensing a controlled substance.

(2) A licensee convicted of a misdemeanor offense relating to the prescribing of a controlled substance shall, at a minimum, have a five (5) year ban from prescribing or dispensing a controlled substance.

(3) A licensee disciplined by a licensing board of another state relating to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall, at a minimum, have the same disciplinary action imposed by this state or the disciplinary action prescribed in subsection (1) or (2) of this section, whichever is greater.

(4) A licensee who is disciplined in another state or territory who holds a Kentucky license and fails to notify the board in writing of the disciplinary action within thirty (30) days of the finalization of the action shall be subject to a fine of \$1,000 for each failure to report.

(5) A licensee who fails to register for an account with the Kentucky All schedule Prescription Electronic Reporting System or who fails to meet the requirements of Section 4 of this administrative regulation shall receive a private admonishment from the board and be given no more than thirty (30) days to become compliant after which time the dentist shall be fined a minimum of \$500 to a maximum of \$10,000.

(6) The Law Enforcement Committee of the Board shall produce a charging decision on the complaint within 120 days of the receipt of the complaint, unless an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 6. Infection Control Compliance. (1) Each licensed dentist in the Commonwealth of Kentucky shall:

(a) Adhere to the standard precautions outlined in the Guidelines for Infection Control in Dental Health-Care Settings published by the Centers for Disease Control and Prevention; and

(b) Ensure that any person under the direction, control, supervision, or employment of a licensee whose activities involve contact with patients, teeth, blood, body fluids, saliva, instruments, equipment, appliances, or intra-oral devices adheres with those same standard precautions.

(2) The board or its designee shall perform an infection control inspection of a dental practice utilizing the Infection Control Inspection Checklist.

(3)(a) Any dentist who is found deficient upon an initial infection control inspection shall have thirty (30) days to be in compliance with the guidelines and submit a written plan of correction to the board.

(b) The dentist may receive a second inspection after the thirty (30) days have passed.

(c) If the dentist fails the second inspection, he or she shall be immediately temporarily suspended pursuant to KRS 313.085 until proof of compliance is provided to the board and the dentist pays the fine as prescribed in 201 KAR 8:520.

(4) Any licensed dentist, licensed dental hygienist, registered dental assistant, or dental assistant in training for registration who performs invasive procedures may seek counsel from the board if he or she tests seropositive for the human immunodeficiency virus or the hepatitis B

virus.

(5) Upon the request of a licensee or registrant, the executive director of the board or designee shall convene a confidential expert review panel to offer counsel regarding under what circumstances, if any, the individual may continue to perform invasive procedures.

Section 7. Termination of a Patient-Doctor Relationship. In order for a licensed dentist to terminate the patient-doctor relationship, the dentist shall:

- (1) Provide written notice to the patient of the termination;
- (2) Provide emergency treatment for the patient for thirty (30) days from the date of termination; and
- (3) Retain a copy of the letter of termination in the patient records.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Guidelines for Infection Control in Dental Health-Care Settings", December 2003; and
 - (b) "Infection Control Inspection Checklist", July 2010.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>. (37 Ky.R. 624; 1629; eff. 2-4-2011; 39 Ky.R. 519; 1381; eff. 2-1-2013.)