BOARDS AND COMMISSIONS
Board of Nursing
(Amended at ARRS Committee)

201 KAR 20:067. Professional standards for medicinal cannabis.

RELATES TO: KRS 211.332, 218B.010, 218B.015, 218B.050, 218B.080, 314.011, 314.042, 314.085, 314.089, 314.091

STATUTORY AUTHORITY: KRS 218B.010, 218B.050, 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 218B.050(10) requires the board to promulgate administrative regulations to establish the procedures, process, and conditions for authorization to provide written certifications, continuing education requirements for medical cannabis practitioners, and minimal standards of care. This administrative regulation establishes the professional standards for an APRN practicing as a medicinal cannabis practitioner.

Section 1. Definitions.

(1) "Advanced Practice Registered Nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Authorization" means a credential that authorizes the APRN to provide written certifications under KRS 218B.050 and this administrative regulation.

(3) "Bona fide practitioner-patient relationship" is defined by KRS 218B.010(1).

(4) "Cabinet" is defined by KRS 218B.010(2).

(5) "Controlled substance" means any Schedule II, III, IV, or V controlled substance and does not include medicinal cannabis.

(6) "Good standing" means a license that at the time of initial application or renewal, is not:

(a) Limited, suspended, probated, revoked, or otherwise disciplined;

(b) Under investigation;

(c) Subject to monitoring, alternative discipline, or peer assistance; or

(d) Held by a person who has ever been subject to disciplinary action by any licensing entity, including the board of any jurisdiction or the United States Drug Enforcement Administration (DEA) that was based, in whole or in part, on the person's inappropriate prescribing, personally furnishing, dispensing, diverting, administering, supplying, or selling a controlled substance or other dangerous drug.

(7) "Immediate family member" is defined by 201 KAR 20:057, Section 1(5).

(8) "Medicinal cannabis" is defined by KRS 218B.010(15).

(9) "Medicinal cannabis practitioner" means an APRN who is holds an authorization under this administrative regulation.

(10) "Minor" is defined by KRS 218B.010(19).

(11) "Prescription Drug Monitoring Program" or "PDMP" is defined by 201 KAR 20:057, Section 1(11).

(12) "Qualified patient" is defined by KRS 218B.010(25).

(13) "Qualifying medical condition" is defined by KRS 218B.010(26).

(14) "Telehealth" is defined by KRS 211.332(5).

(15) "Use of medicinal cannabis" is defined by KRS 218B.010(37).

(16) "Written certification" means a written certification for the use of medicinal cannabis and is defined by KRS 218B.010(39).

Section 2. Applicability. The procedures and standards established in this administrative regulation shall not apply to an APRN who recommends treatment with cannabis or a drug derived from cannabis in accordance with KRS 218B.050(11).

Section 3. Eligibility for an Authorization to provide written certifications.

(1) An APRN applicant for an authorization pursuant to KRS 218B.050 shall:

(a) Hold an active, unrestricted Kentucky license as an APRN that is in good standing;

(b) Have a valid DEA registration and a current registration certificate is on file with the board;

(c) Have an active account with the PDMP with a current PDMP registration certificate on file with the board;

(d) Have not been denied a license to prescribe, possess, dispense, administer, supply, or sell a controlled substance by the DEA or appropriate issuing body of any state or jurisdiction, based, in whole or in part, on the applicant's inappropriate prescribing, personally furnishing, dispensing, administering, supplying, or selling a controlled substance or other dangerous drug;

(e) Have not held a license issued by the DEA or a state licensing administration in any jurisdiction, under which the person may prescribe, personally furnish, dispense, possess, administer, supply, or sell a controlled substance, that has ever been restricted, based, in whole or in part, on the applicant's inappropriate prescribing, dispensing, administering, supplying, or selling a controlled substance or other dangerous drug;

(f) Have not been subject to disciplinary action by any licensing entity that was based, in whole or in part, on the applicant's inappropriate prescribing, personally furnishing, dispensing, diverting, administering, supplying, or selling a controlled substance or other dangerous drug;

(g) Have completed the continuing education requirements in Section 6 of this administrative regulation; and

(h) Have no ownership or investment interest in or compensation agreement with a cannabis business licensed under KRS Chapter 218B.

(2) The board shall provide the cabinet with the names of all APRNs authorized to provide written certifications.

(3) An APRN who fails to renew the authorization or is otherwise unable to legally practice as a registered nurse or APRN shall not practice as or use the title of medicinal cannabis practitioner until an authorization has been issued by the board.

(4) An APRN shall not provide written certifications unless authorized to do so under this section.

(5) It is not within the scope of practice for an APRN to provide written certifications, unless the APRN is authorized to do so under this section.

(6) The board shall notify the cabinet immediately with the name of any APRN whose authorization is lapsed, surrendered, suspended, revoked, or otherwise not renewed.

Section 4. Procedures for submitting an initial or renewal application for authorization to provide written certifications.

(1) An applicant for a certificate to recommend medicinal cannabis shall:

(a) Submit to the board an Authorization to Provide Written Certifications for the Use of Medicinal Cannabis-Initial Application or Renewal Application;

(b) Submit to the board a copy of the APRN's DEA registration certificate;

(c) Submit a copy of the PDMP master account registration certificate to the board;

(d) Submit proof of completion of the education requirements in Section 6(1) of this administrative regulation; and

(e) Pay a nonrefundable fee of $100.

(2) An application shall be considered complete if:

(a) Evidence of all the requirements in subsection (1) of this section are received by the board; and

(b) The APRN is not under investigation pursuant to 201 KAR 20:161 of evidence appearing to show that the applicant has violated KRS 314.091(1).

(3) Upon receipt of the application:

(a) The board shall review all application materials submitted; and

(b) The board may contact individuals, agencies, or organizations for information about the applicant. As part of the application process, the board may request an applicant to appear before the board to answer questions or provide additional information.

(4) The following processes apply if an application is not complete within (6) six months of the date the application is received by the board:

(a) If the application is not complete because required information or materials have not been received by the board, the board may notify the applicant in writing that it intends to consider the application abandoned if the application is not completed. If an application is abandoned, the board may close the application.

1. The notice shall specifically identify the information or materials required to complete the application and inform the applicant that the information or materials shall be received by a specified date.

2. The notice shall also inform the applicant that if the application remains incomplete at the close of business on the specified date the application may be deemed to be abandoned.

3. If all of the information or materials are received by the board by the specified date and the application is determined to be complete, the board shall process the application. The board may require updated information, as it deems necessary.

(b) If the application is not complete because the board is investigating the applicant for a violation of KRS 314.091(1), the board shall:

1. Notify the applicant that although otherwise complete, the application shall not be processed pending completion of the investigation; and

2. Upon completion of the investigation and the determination that the applicant is not in violation of KRS 314.091(1), process the application. The board may require updated information, as it deems necessary.

(5) Once submitted, the Authorization to Provide Written Certifications for the Use of Medicinal Cannabis, either the Initial Application or Renewal Application, shall follow the periods for length and renewal in accordance with 201 KAR 20:085, Sections 1 and 2.

(6) An applicant shall not withdraw an Initial or Renewal Application for Authorization to Provide Written Certifications for the Use of Medicinal Cannabis without the approval of the board.

(7) All supporting documentation required under this section shall be submitted via the KBN Nurse Portal at https://kbn.ky.gov.

Section 5. Renewal and Lapse of the Authorization.

(1) If the APRN fails to renew the authorization in accordance with 201 KAR 20:085, Sections 1 and 2, the authorization shall lapse.

(2) If the APRN fails to timely renew the authorization, the APRN may reapply as an initial applicant in accordance with the procedures set forth in Section 4 of this administrative regulation.

(3) The authorization may be renewed after an APRN's license to practice has been renewed or restored, if the APRN:

(a) Meets the requirements in Section 3 of this administrative regulation;

(b) Pays a nonrefundable fee of $100; and

(c) Has completed the continuing education requirements in Section 6(2) of this administrative regulation.

(4) All supporting documentation required under this section shall be submitted via the KBN Nurse Portal at https://kbn.ky.gov.

Section 6. Continuing Education.

(1) An applicant for an initial authorization shall have completed within the immediate twelve (12) months a one (1) time requirement of six (6) contact hours in the following subjects:

(a) Diagnosing qualifying medical conditions;

(b) Treating qualifying medical conditions with medicinal cannabis;

(c) The pharmacological characteristics of medicinal cannabis and possible drug interactions; and

(d) Indications of cannabis use disorder.

(2) Thereafter, an APRN renewing the authorization shall have obtained during the earning period three (3) continuing education hours in the subjects listed in subsection (1) of this section.

Section 7. Sanctions.

(1) The board may probate, restrict, suspend, revoke, or otherwise discipline an APRN's license or credential to issue authorizations for violations of KRS 314.091(1), or violations in accordance with KRS 218B.015(3)(b).

(2) An investigation against the APRN under this administrative regulation shall be conducted in accordance with 201 KAR 20:161.

(3) A disciplinary proceeding against the APRN under this administrative regulation shall be conducted in accordance with KRS 314.091 and 201 KAR 20:162.

(4) APRN may be ordered by the board to undergo a substance use evaluation or be subject to an immediate temporary suspension, in accordance with KRS 218B.015(4), 314.085, and 314.089.

Section 8. Professional Standards of Care for Providing Written Certifications.

(1) An APRN authorized by the board to provide written certifications may only provide a qualified patient with a written certification after the APRN has complied with the requirements established by KRS 218B.050(4).

(2) A bona fide practitioner-patient relationship may be established pursuant to KRS 218B.050(5) .

(3) An APRN shall comply with the written certification requirements established in KRS 218B.050(6).

(4)

(a) An APRN who provides written certifications shall comply with the professional standards established in this subsection.

(b) Prior to providing a written certification, the APRN shall:

1. Obtain, review, and record a complete and appropriate evaluation of the patient, which shall include:

a. The patient's name;

b. Date or dates of office visits or treatments, and responses to treatments;

c. The patient's medical history, including relevant prescription history and diagnostic results;

d. The patient's history of drug use, including a documented review of the patient's current medication to identify possible drug interactions, including benzodiazepines and opioids;

e. Based on evidence or behavioral indications of addiction or drug abuse, the APRN shall obtain a drug screen on the patient. It is within the APRN's discretion to decide the nature of the screen and which type of drug to be screened;

f. The patient's social and family history;

g. A physical examination relevant to the current medical condition;

h. The patient's psychiatric history;

i. A focused physical examination of the patient relevant to the patient's current medical condition;

j. Documented review that standard medical treatment has been attempted or considered. If standard medical treatment is not attempted, the APRN shall document the reasons that standard medical treatment is not appropriate for this patient;

k. The APRN's diagnosis of the qualified patient's qualifying medical condition; and

l. If the patient has been previously diagnosed with a qualifying medical condition by another health care provider pursuant to KRS 218B.050(4), the APRN may confirm the diagnosis if:

(i) The APRN obtains a copy of the medical records or a detailed written summary indicating the diagnosis;

(ii) The APRN is satisfied that those records confirm a diagnosis of a qualifying condition;

(iii) The APRN maintains a copy of any record or report of any medicinal cannabis practitioner on which the practitioner relied for purposes of meeting the requirements under this paragraph;

(iv) The APRN documents a plan to obtain the patient's consent to obtain and discuss the patient's prior medical records within thirty (30) days of initiating treatment. Upon receipt of the medical records, the APRN shall review and incorporate the information from the records into the evaluation and treatment of the patient. If the APRN is unable, despite best efforts, to obtain the patient's prior medical records, the APRN shall document those efforts in the patient's chart;

(v) The APRN obtains and reviews a PDMP report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilizes that information in the evaluation and treatment of the patient;

(vi) The APRN explains treatment alternatives, the risks, and the benefits of medicinal cannabis with the patient;

(vii) The APRN obtains written informed consent from the patient for treatment;

(viii) The APRN discusses and documents the patient's treatment with the patient's other providers; and

(ix) The patient is a female of childbearing potential and age, and meets the requirements of subparagraph 2. of this paragraph.

2.

a. Prior to initiating treatment, the APRN shall recommend that female patients of childbearing age submit to a pregnancy test and, if pregnant, the APRN shall provide counseling. The APRN shall document a patient's decision to decline to take a pregnancy test and the stated rationale for the patient's decision.

b. Prior to providing a written certification to a patient who is pregnant or breastfeeding, the APRN shall document the patient's decision to decline consultation referenced in this subsection, and the stated rationale for the patient's decision.

(5) The written certification shall include a statement from the APRN certifying that:

(a) A bona fide practitioner-patient relationship exists between the APRN and qualified patient.

(b) The qualified patient has been diagnosed with at least one (1) qualifying medical condition for which the APRN believes the patient may receive medical, therapeutic, or palliative benefit; and

(c) In the APRN's professional medical opinion, the qualified patient may receive medical, therapeutic, or palliative benefit from the use of medicinal cannabis.

(6) An APRN who authorizes a written certification shall be available to provide follow-up care and treatment to the qualified patient, including physical examinations relevant to the qualified patient's condition to determine the efficacy of medicinal cannabis in treating the patient's qualifying medical condition. If the qualifying condition was indicated as a terminal illness in the prior six (6) months, the APRN shall confirm whether the qualified patient's condition continues to be a terminal illness.

(7) The APRN shall terminate or decline to issue a new written certification under any of the following circumstances:

(a) The patient no longer has the diagnosis of, or symptoms of, the qualifying medical condition;

(b) The APRN is not authorized to issue a written certification;

(c) Based on the APRN's clinical judgement, the patient or caregiver is abusing or diverting medicinal cannabis; or

(d) The qualified patient is deceased.

(8) The APRN shall notify the cabinet in writing within thirty (30) days the name of any patient for whom the APRN has terminated or declined to issue a written certification.

(9) The records required for the recommendation for a written certification may be kept with the patient's other medical records and shall be retained for at least five (5) years following the last office visit by the patient.

(10) An APRN medicinal cannabis practitioner shall not:

(a) Dispense medicinal cannabis; or

(b) Provide a written certification to an immediate family member or for himself or herself.

Section 9. Documented Deviation from Professional Standards for Providing Written Certifications. If an APRN is unable to conform to professional standards for providing written certifications set forth in this administrative regulation due to circumstances beyond the APRN's control, or the APRN makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the APRN shall document those circumstances in the patient's record and only provide a written certification to the patient if the patient record appropriately justifies the providing of a written certification under the circumstances.

Section 10. Material Incorporated by reference.

(1)

(a) "Authorization to Provide Written Certifications for the Use of Medicinal Cannabis-Initial Application", 01/2024; and

(b) "Authorization to Provide Written Certifications for the Use of Medicinal Cannabis-Renewal Application", 01/2024.

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(50 Ky.R. 990, 1717, 1878; eff. 3-21-2024.)

FILED WITH LRC: February 12, 2024

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov.