

# ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

## Minutes of the December Meeting

December 3, 2020

### Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Thursday, December 3, 2020, at 1:00 PM, in Room 149 of the Capitol Annex. Representative David Hale, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams, Alice Forgy Kerr, and Reginald Thomas; Representatives Deanna Frazier, Mary Lou Marzian, and Tommy Turner.

Guests: Alan Harrison, UK Feed and Milk Programs; Sharron Burton, Personnel Cabinet; Justin McNeil, Kentucky Retirement Systems; Eden Davis, Larry Hadley, Board of Pharmacy; Carson Kerr, Jonathan Shrewsbury, Board of Optometric Examiners; Christopher Hunt, Mason McNulty, Board of Barbering; Jessica Estes, Morgan Ransdell, Board of Nursing; David Trimble, Board of Chiropractic Examiners; Bryan Morrow, Board of Licensure for Pastoral Counselors; Leah Boggs, Kevin Winstead, Office of Claims and Appeals; DJ Wasson, Department of Insurance; Marc Guilfoil, Chad Thompson, Jennifer Wolsing, Horse Racing Commission; Julie Brooks, Donna Little, Kelli Rodman; Department of Public Health; Patti Clark, Stephanie Craycraft, Justin Dearing, Phyllis Millsbaugh, Department for Behavioral Health, Developmental and Intellectual Disabilities; Rachel Ratliff, Department for Community Based Services; Joel Thornbury, Shannon Stiglitz, Kentucky Pharmacists Association; Robert Heleringer, Attorney.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Nichols.

The Administrative Regulation Review Subcommittee met on Thursday, December 3, 2020, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

UNIVERSITY OF KENTUCKY: Agriculture Experiment Station: Milk and Cream

12 KAR 5:010. Licenses. G. Alan Harrison, director, Milk Program, represented the Agriculture Experiment Station.

In response to a question by Co-Chair West, Mr. Harrison stated that many of the amendments to these administrative regulations were related to administrative regulation sunset prevention. These administrative regulations had not been revised in over twenty (20) years. References were updated, and changes were made to ensure that dairy producers were properly paid. In addition these administrative regulations governed milk testers and sampler-weighers. Coronavirus (COVID-19) had caused the agency to reduce inspections.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 5:020. Testing.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 5:030. Test samples.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 5:040. Sampling and weighing.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 5:050. Inspections.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to clarify standards for the grading scale for sampler-weigher evaluations. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 5:060. Purchases from farm bulk tanks.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 5:070. Uniform standards for payment.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified

101 KAR 2:210 & E. 2021 Plan Year Handbook for the Public Employee Health Insurance Program. Sharron Burton, deputy commissioner, represented the cabinet.

In response to a question by Co-Chair West, Ms. Burton stated that the Kentucky Public Employee Health Insurance Program Benefit Selection Guide was not ready for publishing each year until August or September, which did not leave enough time for the administrative regulation to become effective by January 1 of each year; therefore, the agency usually filed this as an emergency and ordinary administrative regulation each year. Additionally, the guide needed to be distributed to employees in October, which further limited the time for amending this administrative regulation.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:149. Quasi-governmental employer cessation window. Justin McNeil, staff attorney, represented the systems.

In response to a question by Co-Chair Hale, Mr. McNeil stated that the agency amendment represented a technical correction.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to correct the date for the employer cessation window to April 1, 2020. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:050. Licenses and Permits; Fees. Eden Davis, general counsel, and Larry Hadley, executive director, represented the board.

201 KAR 2:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 3, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to: (a) add a definition for “component”, “illegitimate product”, and “product”; and (b) clarify the definition for “suspect product”; (3) to amend Section 5(3) and (4) to clarify that these requirements shall be for a company that handles prescription drugs and drug-related devices exempt from the Drug Supply Chain Security Act (DSCSA); and (4) to amend Section 5(3)(b) to require records to be readily retrievable within forty-eight (48) hours.

201 KAR 2:106. Licensed or permitted facility closures.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:225. Special limited pharmacy permit – medical gas.

In response to a question by Representative Marzian, Mr. Hadley stated that this administrative regulation applied primarily to prescription oxygen for patients who used oxygen at home. It was possible that dental offices might also use oxygen.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 4 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:240. Special limited pharmacy permit - Charitable.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:320. Requirements for manufacturers and virtual manufacturers.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) add a definition for “illegitimate product”, and “product”; and (b) clarify the definition of “suspect product”; (2) to amend Section 5(3) and (4) to clarify that these requirements shall be for a company that handles prescription drugs and drug-related devices exempt from the Drug Supply Chain Security Act (DSCSA); (3) to amend Section 5(3)(b) to require records to be readily retrievable within forty-eight (48) hours; and (4) to amend the TITLE; the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 5, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### Board of Optometric Examiners

201 KAR 5:140. Dispensing. Carson Kerr, executive director, and Dr. Jonathan Shrewsbury, president, represented the board. Joel Thornbury, president, Kentucky Pharmacists Association, and Shannon Stiglitz, senior vice president of government affairs, Kentucky Retail Federation, for which the Kentucky Pharmacists Association is an affiliate.

In response to questions by Co-Chair Hale, Mr. Kerr stated that this administrative regulation codified provisions for optometrists to dispense medication that an optometrist is statutorily authorized to prescribe. This administrative regulation did not expand the scope of practice for optometrists or authorize the dispensing of controlled substances. KRS Chapter 217 and KRS 320.240 authorized this administrative regulation. The board received public comments, responded to those comments, and did not amend this administrative regulation in response to those comments. Dr. Shrewsbury stated that this administrative regulation did not change the board’s scope of practice.

In response to a question by Co-Chair Hale, Mr. Thornbury stated that the Board of Optometric Examiners was attempting to dispense medications. KRS 217.015 defined who a practitioner was. KRS 320.240 did not establish that optometrists may dispense medications; it uses “prescribe” and “administer.” Removing the pharmacists from this process was dangerous. Some patients saw multiple optometrists. The triage process was not always as thorough as that of the patient’s pharmacist. Pharmacies were required to be inspected. This administrative regulation would result in the storage of medications at optometrists’ offices, which would need to be inspected.

Ms. Stiglitz stated that KRS Chapter 320 did not reference “dispensing.” Advanced Practice Registered Nurses and physicians’ assistants sought specific statutory authority beyond what was in KRS Chapter 217 at the time to authorize dispensing of non-controlled medications under certain conditions. The Board of Optometric Examiners should seek similar specific authority from the General Assembly. It seemed that the General Assembly had encouraged well-regulated dispensing in Kentucky. By the board’s reasoning, any mid-

level profession could assert authority if the action was not expressly prohibited by statute. A recent Supreme Court decision regarding horse racing opined that agencies were prohibited from claiming authority beyond the agency's enabling statutes. This decision was intended for all state agencies.

In response to questions by Representative Marzian, Ms. Stiglitz clarified that a mid-level professional could not dispense without prescriptive authority.

In response to a question by Co-Chair West, Mr. Kerr stated that the most common types of medications optometrists would be dispensing were eye drops and eye gels. Dr. Shrewsbury stated that optometrists had had the authority to dispense for a long time. The current problem related to wholesale medication companies that, because of coronavirus (COVID-19) and cost issues, were often unable to supply pharmacies with optometric medications in a timely fashion. KRS Chapters 217 and 320 already authorized optometrists to dispense, and this administrative regulation would actually limit dispensing by clarifying provisions.

In response to a question by Senator Thomas, Ms. Stiglitz stated that, while optometrists had statutory authority to prescribe and administer medications, "dispensing" was specifically defined by statute as a distinct act from prescribing or administering. Including dispensing with prescribing and administering would nullify the pharmacy statutes.

In response to a question by Representative Frazier, Mr. Kerr and Dr. Shrewsbury stated that the board would provide this subcommittee with information regarding how other states managed this issue. Ms. Stiglitz stated that many other states had specific, limited statutory authority for the provisions for optometrists dispensing medication. Ms. Stiglitz asked if the board would be willing to defer consideration of this administrative regulation to the January 2021 meeting of this subcommittee.

In response to questions by Representative Marzian, Mr. Kerr stated that deferral of this administrative regulation would require repromulgation by the agency. This was an emergent or urgent care situation, especially in rural areas. The decision in the *Family Trust Foundation of Kentucky, Incorporated v. Commonwealth of Kentucky Horse Racing Commission* determined that KRS 320.240(7) established the sole authority to determine what constituted the practice of optometry. Mr. Thornbury stated that, as a rural practitioner, patients' health was paramount. Pharmacists would locate needed medications and served as a check and balance to protect patient health.

Co-Chair West stated that, if this administrative regulation proceeded to the second committee or committees, there would be another chance for further discussion with stakeholders. The Interim Joint Committee or Standing Committees on Health, Welfare, and Family Services were authorized to make amendments if necessary and might be better

equipped to address the specific stakeholder concerns regarding this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Board of Barbering

201 KAR 14:035. Public identification of and access to barber shops and schools. Christopher Hunt, attorney, and Mason McNulty, administrator, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:070. Shop license applications.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:095. Accredited school.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:100. School advertising.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:105. Barbering school enrollment and postgraduate requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:130. School fees for services.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:135. School attendance hours.

In response to a question by Co-Chair West, Mr. Hunt stated that the board had received requests to allow additional hours of attendance per week in order for students to finish the program more quickly. Additional hours were not added to the total required.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:140. School license.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Board of Nursing

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs. Dr. Jessica Estes, executive director, and Morgan Ransdell, general counsel, represented the board.

201 KAR 20:390. Nursing Incentive Scholarship Fund.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Board of Chiropractic Examiners



201 KAR 21:001. Definitions for 201 KAR Chapter 021. David Trimble, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:015. Code of ethical conduct and standards of practice.

In response to questions by Co-Chair West, Mr. Trimble stated that once information was received by the board regarding a settlement over \$10,000, the matter would be remanded to the board's Complaint Committee to determine if more investigation was warranted. The matter would be kept confidential and would not become public unless the matter became a disciplinary issue, which would be addressed in a hearing in accordance with KRS Chapter 13B. Additionally, these matters were already reported to a federal data bank. The board did not believe that this would have a chilling effect on settlements.

Senator Thomas stated that there were civil settlements that remained confidential. If these settlements were not publicly disclosed, there would not seem to be concern of a chilling effect.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:025. Board, officers, duties, and compensation.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:045. Specialties.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:051. Board hearings.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:052. Appeal of denial of license.

201 KAR 21:053. Appeal of revocation of probation.

201 KAR 21:055. Colleges and universities; accreditation, approval.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:061. Repeal of 201 KAR 021:060.

201 KAR 21:065. Professional advertising; seventy-two (72) hour right of restriction.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:075. Peer review committee procedures and fees.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:085. Preceptorship Program.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Pastoral Counselors

201 KAR 38:070. Renewal of licenses and continuing education. Bryan Morrow, attorney, represented the board.

PUBLIC PROTECTION CABINET: Office of the Secretary: Tax Appeals

802 KAR 1:010 & E. Tax appeal procedures. Leah Boggs, executive advisor, and Kevin Winstead, general counsel, represented the office.

In response to a question by Co-Chair Hale, Mr. Winstead stated that these administrative regulations were necessary to implement the reorganization Executive Order that abolished the Kentucky Claims Commission and established the Office of Claims and Appeals in its place and established three (3) separate boards attached to the office. This would streamline processes and address a backlog of about 150 existing tax appeals cases.

In response to questions by Co-Chair West, Mr. Winstead stated these administrative regulations were filed on an emergency basis because the three (3) boards needed provisions in place to be able to function. Waiting on ordinary administrative regulations would leave the boards unable to move forward on the tax appeal backlog and would create additional backlog. These boards all addressed topics that directly related to public health, safety, or welfare. Ms. Boggs stated that the office had statutory authority to promulgate administrative regulations. The Executive Order established the new office and boards. Legislative action to ratify the Executive Order would be taken up during the next Regular Session of the General Assembly of Kentucky. Mr. Winstead stated that this was the normal reorganization process.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 5 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Negligence Claims

802 KAR 2:010 & E. Negligence claims before the Board of Claims.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 6, 7, 10, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Crime Victims Claims

802 KAR 3:010 & E. Crime victims compensation.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjustors

806 KAR 9:030. Adjuster licensing restrictions. DJ Wasson, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities.

A motion was made and seconded to approve the following amendments: to amend Section 2 to: (1) cross reference the disclosure form in 806 KAR 3:210 that may be used to provide the disclosure required under KRS 304.9-135(2)(c); and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:370. Preneed funeral agent license.

In response to questions by Co-Chair Hale, Ms. Wasson stated that this administrative regulation increased a limited agent license for pre-need insurance policies sold to pay for funeral expenses. The \$25,000 limit was the standard for a pre-need policy. The limit would prevent agents from selling full life insurance policies or annuities for other purposes without a standard license.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, and 4 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Trade Practices and Frauds

806 KAR 12:170. Life insurance disclosures.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Insurance Premium Finance Companies

806 KAR 30:010. Application for license procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add a Section 5 for material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 30:070. Books and records subject to inspection.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Liability Self-insurance Groups

806 KAR 46:040. Forms for application and financial statements.

Workers' Compensation Self-insured Groups

806 KAR 52:010. Forms for application, security deposits and financial statements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Vital Statistics

901 KAR 5:120. Abortion reporting. Julie Brooks, regulation coordinator, represented the department.

In response to questions by Representative Marzian, Ms. Brooks stated that the cost of \$48,000 was for reports and came through the Office of Vital Statistics.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 5 and the material incorporated by reference to require additional information in accordance with KRS 213.101 and KRS Chapter 311. Without objection, and with agreement of the agency, the amendments were approved.

## Communicable Diseases

902 KAR 2:220 & E. School notification standards related to COVID-19.

## Local Health Departments

902 KAR 8:160 & E. Local health department operations requirements.

A motion was made and seconded to approve the following amendment: to amend Section 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

902 KAR 8:170 & E. Local health department financial management requirements.

In response to a question by Co-Chair West, Ms. Brooks stated that this administrative regulation clarified the distinction between personal service contracts and other types of contracting. A personal service contract was used in situations in which positions could not be filled through a standard, open register.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

## Sanitation

902 KAR 10:030. Registered environmental health specialists and sanitarians. Patti Clark, program manager; Justin Dearing, program administrator; and Phyllis Millspaugh, assistant director, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 3, 4, 6 through 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

## Milk and Milk Products

902 KAR 50:040. Hauler requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; AND NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section

5 to require all Grade A bulk tank raw milk to be collected at least every seventy-two (72) hours rather than every forty-eight (48) hours. Without objection, and with agreement of the agency, the amendments were approved.

Department for Behavioral Health, Developmental and Intellectual Disabilities:  
Substance Abuse

908 KAR 1:381. Repeal of 908 KAR 001:380.

908 KAR 1:400. Licensing and standards for substance use and misuse prevention.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 7, and 12 to comply with the drafting requirements of KRS Chapter13A; and (2) to amend Section 2 to reference the administrative regulation for licensing for Alcohol and Other Drug Prevention agencies (AODP), 908 KAR 1:370. Without objection, and with agreement of the agency, the amendments were approved.

Child Welfare

922 KAR 1:450 & E. Eligibility confirmation for tuition waiver. Mary Carpenter, assistant director, and Rachel Ratliff, regulation coordinator, represented the department.

922 KAR 1:520 & E. Supplements to per diem rates.

Other Business: Staff read a resolution adjourning this subcommittee in honor of Representative Tommy Turner upon his retirement from the General Assembly. A motion was made and seconded to approve the resolution. Without objection, the resolution was approved. Co-Chair Hale stated that Representative Turner was more than a colleague; he was a great friend and an advocate for sportsmen throughout the Commonwealth. He would be missed.

The following administrative regulations were deferred or removed from the December 3, 2020, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Architects

201 KAR 19:215. Accredited schools and colleges.

201 KAR 19:220. Application for examination.

201 KAR 19:225. Examinations required; general provisions.

201 KAR 19:230. Reexamination; reconsideration.

201 KAR 19:235. Reciprocity; registration without examination.

201 KAR 19:240. Resident licensed in another state; reciprocity.

201 KAR 19:245. Duplicate certificates.

201 KAR 19:250. Temporary licensing not permitted.

201 KAR 19:255. Fees.

201 KAR 19:260. Professional practice standards; violations, penalties.

201 KAR 19:265. Individual seals; office titles.

201 KAR 19:270. Plans and specifications standards.

201 KAR 19:275. Use of title “architect”.

201 KAR 19:410. Accredited schools and colleges for certified interior designers.

201 KAR 19:415. Application for certification as an interior designer.

201 KAR 19:420. Qualifications for certification.

201 KAR 19:425. Limited period of certification by prior experience.

201 KAR 19:430. Certification by persons credentialed in other jurisdictions.

201 KAR 19:435. Certification renewal.

201 KAR 19:440. Fees for certification of interior designers.

201 KAR 19:445. Continuing education.

201 KAR 19:450. Signature of documents by certified interior designers; use of title.

201 KAR 19:455. Unprofessional conduct.

Board of Licensure of Marriage and Family Therapists

201 KAR 32:035. Supervision of marriage and family therapist associates.



TRANSPORTATION CABINET: Department of Vehicle Regulation:  
Administration

601 KAR 2:231. Repeal of 601 KAR 002:030.

601 KAR 2:232 & E. Kentucky Ignition Interlock Program.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of  
Education: General Administration

702 KAR 1:190E. District employee emergency leave.

Facilities Management

702 KAR 4:090. Property disposal.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:091. Workers' compensation hospital fee schedule.

PUBLIC PROTECTION CABINET: Department of Insurance: Agents,  
Consultants, Solicitors, and Adjustors

806 KAR 9:025. Licensing process.

806 KAR 9:360. Pharmacy benefit manager license.

Trade Practices and Frauds

806 KAR 12:120. Suitability in annuity transactions.

806 KAR 12:150. Annuity disclosures.

Horse Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions for 810 KAR Chapter 001.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:120. Exotic wagering.

Harness Racing

811 KAR 1:005. Definitions.

811 KAR 1:125. Pari-mutuel wagering.

811 KAR 1:250. Exotic wagering.

Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:120. Kentucky Horse Breeders' Incentive Fund.

811 KAR 2:160. Exotic wagering.

Horse Racing Commission: Licensing

810 KAR 3:020. Licensing of racing participants. Marc Guilfoil, executive director; Chad Thompson, deputy general counsel; and Jennifer Wolsing, general counsel, represented the commission. . Robert Heleringer, attorney and former Kentucky Representative, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Hale, Ms. Wolsing stated that this administrative regulation established financial responsibility requirements, which protected businesses in the horse racing industry from insolvent or recalcitrant debtors. The original version of these provisions required that there be an unsatisfied, unappealable, and final judgment to ensure that there was no dispute regarding whether or not a debt was owed. A court determination concluded that the previous version of this administrative regulation did not include debts arising from non-licensed businesses in the horse racing industry. The commission believed that there was no reason to exclude non-licensed businesses related to the horse racing industry. In the past nine (9) years, almost half of the financial responsibility complaints received by the commission pertained to non-licensed businesses, such as feed and supply businesses, boarding services, and transportation entities. After the November meeting of this subcommittee, the commission developed an agency amendment to address the concerns expressed at that meeting. The agency amendment proposed to use standards from New York for consistency with other racing states, which took a broad view related to financial responsibility. The proposed agency amendment also eliminated concerns that the commission could revoke or suspend a license if the licensee was making payments toward the debt pursuant to an agreed payment plan. This proposal would not lead to a litigation glut because New York did not encounter a glut using the same language.

In response to a question by Co-Chair Hale, Mr. Heleringer stated that he was opposed to this administrative regulation, which represented a huge expansion of authority. While this administrative regulation pertained to a former client, Mr. Heleringer was not appearing on behalf of any client. The proposed agency amendment further expanded the list of entities to which a licensee might owe a debt that would indicate financial irresponsibility to virtually anyone anywhere. A person who was already in debt needed gainful employment to pay outstanding debts, and these requirements could deny employment due to lack of licensure. The requirements were not specific enough. A yard sale dispute could even become part of this matter. The important licensees, such as wealthy well-known owners, would not be included as financially irresponsible even though many of them had financial disputes. This was retaliation against a former client. This would turn the commission into a collection agency. This proposed agency amendment was worse than the previous administrative regulation. The debts that were considered financial irresponsibility should only include debts between licensees.

Co-Chair Hale clarified that this subcommittee did not reject this administrative regulation at the November meeting. This administrative regulation was deferred, with agreement from the agency, at that meeting.

Senator Thomas stated that he informally checked with the Kentucky Bar Association, who stated that the bar could take disciplinary action in a matter of financial irresponsibility between licensees after a judgment if restitution was still not taking place. Disciplinary action could include disbarment. This type of situation, like matters addressed by this administrative regulation, did seem like financial irresponsibility. The proposed agency amendment seemed appropriate, especially given that the language was the same as that used in New York.

In response to a question by Senator Thomas, Mr. Heleringer stated that the example of Kentucky Bar Association was commensurate with the current version of this administrative regulation, which addressed financial matters between licensees. The proposed agency amendment would include non-licensed entities. If the commission wished to include entities such as breeders, those could be included specifically in the body of this administrative regulation. Specificity was needed.

Senator Adams stated that, while she typically supported administrative regulations from the commission, this seemed punitive and the result of a specific situation. It seemed like overreach. Senator Adams requested to be recorded as voting in opposition to this administrative regulation. In response, Ms. Wolsing stated that the commission, previous to the court determination, considered financial responsibility requirements to relate to non-licensed, horse-racing related entities. The commission intended to include those non-licensed, horse-racing related entities as part of this updated administrative regulation.

In response to questions by Co-Chair West, Ms. Wolsing stated that the commission, in the past nine (9) years, had received a total of seventy-nine (79) verified financial responsibility complaints, over forty-eight (48) percent of which related to non-licensed entities. The commission averaged ten (10) to twelve (12) financial irresponsibility complaints per year. Prior to the court determination, the commission interpreted this administrative regulation to apply to licensed and non-licensed occupations. This updated administrative regulation would clarify the commission's original intent. Co-Chair West stated that administrative regulations should be more specific, not less. This seemed overly broad. Ms. Wolsing responded that this administrative regulation established that this is based on a final, unappealable judgment; therefore, things like yard sales would not be included.

In response to a question by Co-Chair Hale, Mr. Thompson stated that there was no retaliatory intent with regard to this administrative regulation; however, this proposed revision was in response to that decision in order to clarify the matter. For two (2) years there were no payments made regarding the judgement in question. Payments only began after the case was domesticated. That type of situation seemed to signify bad faith of the person seeking licensure.

In response to a question by Representative Marzian, Ms. Wolsing stated that the commission preferred not to include specifically in the administrative regulation the types of non-licensed entities that might be related to the horse-racing industry because the court decision indicated that this administrative regulation could not be used against all unlicensed occupations. Additionally, the commission was afraid that some entities would be inadvertently left off the list.

In response to a question by Senator Adams and Representative Marzian, Ms. Wolsing stated that this administrative regulation applied to entities with a final, unappealable judgement that was brought to the attention of the commission. Generally, a non-horse-racing-related entity would not be bringing a case to the commission.

In response to a question by Co-Chair Hale, Mr. Heleringer stated that his client consented to the agreed order to make monthly payments and was making those payments when the court made its determination. There was no driving need for this change until the court determination was made. This administrative regulation was overly broad and would result in the commission becoming a collection agency. The commission would be open to a glut of litigation. Banks, credit card agencies, and similar entities would be aware of this change and would use it as an enforcement mechanism. This would not be applied to, for example, influential and famous horse breeders. Instead, less powerful licenses would be impacted and might lose employment if licensure was revoked or suspended.

In response to a question by Senator Adams, Ms. Wolsing agreed to defer consideration of this administrative regulation to the January 2021 meeting of this

subcommittee. A motion was made and seconded to defer consideration of this administrative regulation to the January 2021 meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Communicable Diseases

902 KAR 2:210E. Covering the face in response to a declared national or state public health emergency.

Food and Cosmetics

902 KAR 45:180. Permits and fees for food manufacturing plants, food storage warehouses, salvage processors and distributors, cosmetic manufacturers, and certificate of free sale.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:035 & E. Certification process.

921 KAR 3:042. Supplemental Nutrition Assistance Program Employment and Training Program.

Child Welfare

922 KAR 1:500. Educational and training vouchers.

Daycare

922 KAR 2:405E. Enhanced requirements for certified and licensed child care and limited duration child care programs as a result of a declared state of emergency.

The subcommittee adjourned at 3 p.m. The next meeting of this subcommittee is tentatively scheduled for January 12, 2021, at 1 p.m.