

1 AN ACT relating to licensed occupations.

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

3 ➔Section 1. KRS 310.070 is amended to read as follows:

- 4 (1) It shall be unlawful for any person to engage in the practice of dietetics or nutrition,  
5 to act or to represent himself ***or herself*** to be a dietitian or a nutritionist, or to use  
6 such titles as "dietitian," "nutritionist," "licensed dietitian," "certified nutritionist,"  
7 or such letters as "L.D.," "C.N.," or any word, letters, or title indicating or implying  
8 that the person is a dietitian or nutritionist, unless that person holds a license or  
9 certificate issued by the board.
- 10 (2) Nothing in this chapter shall be construed to prevent or restrict:
- 11 (a) A person licensed in this state from carrying out any therapy or practice for  
12 which he ***or she*** is duly licensed, including but not limited to physicians,  
13 osteopaths, podiatrists, chiropractors, dentists, and nurses;
- 14 (b) A student enrolled in an approved academic program in dietetics, if the  
15 practice constitutes a part of a course of study under the supervision of a  
16 licensed dietitian or certified nutritionist. The student shall be designated by  
17 title clearly indicating his ***or her*** status as a student or trainee;
- 18 (c) A dietitian serving in the ***United States*** Armed Forces, the Public Health  
19 Service of the United States, or employed by the United States Department of  
20 Veterans Affairs from engaging in the practice of dietetics, if that practice is  
21 related to his ***or her*** service or employment;
- 22 (d) Persons performing the activities and services of a nutrition educator in the  
23 employment of a federal, state, county, or municipal agency, or in an  
24 elementary or secondary school or accredited degree granting educational  
25 institution, if the activities and services are part of a salaried position;
- 26 (e) Federal, state, county, or municipal employees involved with nutrition related  
27 programs, including but not limited to, the cooperative extension services,

1 child nutrition programs, and Project Headstart from engaging in the practice  
2 of dietetics or nutrition within the discharge of their official duties. Any  
3 person engaging in the practice of dietetics or nutrition outside the scope of  
4 his or her official duties shall be licensed as provided in this chapter; or

5 (f) Persons employed in a hospital or nursing home from performing dietary  
6 services under the supervision of a licensed dietitian.

7 (3) The provisions of this chapter shall not apply to a person who owns a health food  
8 store or who manufactures, distributes, or sells health foods, dietary supplements, or  
9 vitamins nor shall the provisions of this chapter be construed to affect any other  
10 person who provides nutritional or dietary advice or sells nutritional or dietary  
11 supplements if the person does not use the title dietitian, licensed dietitian, or  
12 certified nutritionist.

13 ➔Section 2. KRS 311.591 is amended to read as follows:

14 (1) The president of the board shall divide the membership of the board, excluding  
15 himself or herself, into two (2) panels of seven (7) members, each panel to include  
16 at least one (1) consumer member. Each panel shall have the power to act as an  
17 inquiry or a hearing panel. The president shall not be a permanent member of either  
18 panel, but shall have the power to render the deciding vote whenever a tie vote is  
19 rendered by either panel and shall have the power to serve as a member of either  
20 panel when necessary to achieve a quorum by majority.

21 (2) Grievances may be submitted by an individual, a member of the board ~~(including~~  
22 ~~board members)~~, organization, or entity. Each grievance shall be investigated as  
23 necessary and the executive director shall assign each grievance to an inquiry panel.  
24 All inquiry panels and the executive director shall have the power to issue  
25 investigatory subpoenas for the appearance of any person or production of any  
26 record, document, or other item within the jurisdiction of the Commonwealth. The  
27 panel or executive director may seek enforcement of investigatory subpoenas and

- 1 search warrants in the courts of the Commonwealth as may be necessary.
- 2 (3) Upon completion of its inquiry, the inquiry panel shall make a finding that:
- 3 (a) There is no evidence of a violation of any medical practice act and no further  
4 action is necessary;
- 5 (b) There is insufficient evidence of a violation to warrant the issuance of a  
6 complaint, but that there is evidence of a practice or activity that requires  
7 modification and the panel may issue a letter of concern under KRS  
8 311.550(22). The letter of concern shall be a public document and may be  
9 used in future disciplinary actions against the physician;
- 10 (c) The grievance discloses an instance of misconduct which does not warrant the  
11 issuance of a complaint; in these instances, the panel may admonish the  
12 physician for his *or her* misconduct; or
- 13 (d) The grievance discloses one (1) or more violations of the provisions of this  
14 chapter which warrant the issuance of a complaint; in these instances, the  
15 panel shall cause a complaint to be prepared, signed by the presiding officer,  
16 which shall contain sufficient information to apprise the named physician of  
17 the general nature of the charges.
- 18 (4) The inquiry panel shall cause a complaint to be served on the charged physician by  
19 personal delivery or by certified mail to the physician's last address of which the  
20 board has record. The physician shall submit a response within thirty (30) days after  
21 service. Failure to submit a timely response or willful avoidance of service may be  
22 taken by the board as an admission of the charges.
- 23 (5) Upon the issuance of the complaint, the executive director shall assign the matter  
24 for an administrative hearing by a hearing panel. No member who served on the  
25 inquiry panel may also serve as a member of the hearing panel. The hearing panel or  
26 the hearing officer on behalf of the panel shall preside over all proceedings pursuant  
27 to the issuance of a complaint.

- 1 (6) The board may promulgate administrative regulations regarding the informal  
2 disposition of any complaint, and an informal disposition may be made at any stage  
3 of the proceeding.
- 4 (7) Upon completion of an administrative hearing, the hearing panel shall issue a final  
5 order that:
- 6 (a) Dismisses the complaint upon a conclusion that the provisions of this chapter  
7 have not been violated;
- 8 (b) Finds a violation of the provisions of this chapter, but does not impose  
9 discipline because the panel does not believe discipline to be necessary under  
10 the circumstances; or
- 11 (c) Imposes discipline upon the licensee; in these instances, the panel may revoke,  
12 suspend, restrict, deny, or limit a license, or may reprimand a licensee or place  
13 a licensee on probation under terms the panel may establish to protect the  
14 licensee, his or her patients, or the general public. The hearing panel may  
15 impose a fine whenever it finds that a violation of this chapter has occurred. If  
16 the board substantiates that sexual contact occurred between the physician and  
17 the patient while the patient was under the care of or in a professional  
18 relationship with the physician, the physician's license may be revoked or  
19 suspended with mandatory treatment of the physician as prescribed by the  
20 board. The board may require the physician to pay a specified amount for  
21 mental health services for the patient which are needed as a result of the  
22 sexual contact. The hearing panel's order shall be considered the final order of  
23 the board regarding the matter.
- 24 (8) Regardless of the restrictions on public disclosure of information established in  
25 subsection (9) of this section, the board may order information derived from any  
26 investigation or inquiry be released to the physician licensure authority of another  
27 state or to any health care or mental health care facility licensed and regulated by

1 the Commonwealth of Kentucky upon a showing that the information is necessary  
2 to determine the propriety of a physician practicing in a particular state or facility.

3 (9) The presiding officer at any proceeding held pursuant to a complaint or show cause  
4 order shall take whatever measures are necessary to protect the privacy interests of  
5 individuals other than the charged physician upon a showing that evidence is to be  
6 introduced, the public disclosure of which would constitute a clear invasion of  
7 personal privacy. It is the general policy of the Commonwealth that administrative  
8 proceedings should be open to the public. Therefore, in applying this subsection, the  
9 presiding officer shall balance the competing interests and employ the least  
10 restrictive measures available to protect the privacy interests involved.

11 ➔Section 3. KRS 311.597 is amended to read as follows:

12 As used in KRS 311.595(9), "dishonorable, unethical, or unprofessional conduct of a  
13 character likely to deceive, defraud, or harm the public or any member thereof" shall  
14 include but not be limited to the following acts by a licensee:

15 (1) Prescribes or dispenses any medication:

16 (a) With the intent or knowledge that a medication will be used or is likely to be  
17 used other than medicinally or for an accepted therapeutic purpose;

18 (b) With the intent to evade any law with respect to sale, use, or disposition<sub>2</sub> of  
19 the medication;

20 (c) For the licensee's personal use or for the use of his *or her* immediate family  
21 when the licensee knows or has reason to know that an abuse of a controlled  
22 substance is occurring, or may result from such a practice;

23 (d) In such amounts that the licensee knows or has reason to know, under the  
24 attendant circumstances, that said amounts so prescribed or dispensed are  
25 excessive under accepted and prevailing medical practice standards; or

26 (e) In response to any communication transmitted or received by computer or  
27 other electronic means, when the licensee fails to take the following actions to

1 establish and maintain a proper physician-patient relationship:

- 2 1. Verification that the person requesting medication is in fact who the  
3 patient claims to be;
- 4 2. Establishment of a documented diagnosis through the use of accepted  
5 medical practices; and
- 6 3. Maintenance of a current medical record.

7 For the purposes of this paragraph, an electronic, on-line, or telephonic  
8 evaluation by questionnaire is inadequate for the initial evaluation of the  
9 patient or for any follow-up evaluation.

10 (2) Issues, publishes, or makes oral or written representations in which grossly  
11 improbable or extravagant statements are made which have a tendency to deceive or  
12 defraud the public, or a member thereof, including but not limited to:

13 (a) Any representation in which the licensee claims that he or she can cure or  
14 treat diseases, ailments, or infirmities by any method, procedure, treatment, or  
15 medicine which the licensee knows or has reason to know has little or no  
16 therapeutic value;

17 (b) Represents or professes or holds himself or herself out as being able and  
18 willing to treat diseases, ailments, or infirmities under a system or school of  
19 practice:

- 20 1. Other than that for which he or she holds a certificate or license granted  
21 by the board, or
- 22 2. Other than that for which he or she holds a degree or diploma from a  
23 school otherwise recognized as accredited by the board, or
- 24 3. Under a school or system which he or she professes to be self-taught.

25 For purposes of this subsection, actual injury to a patient need not be established.

26 (3) A serious act, or a pattern of acts committed during the course of his or her medical  
27 practice which, under the attendant circumstances, would be deemed to be gross

1 incompetence, gross ignorance, gross negligence, or malpractice.

2 (4) Conduct which is calculated or has the effect of bringing the medical profession  
3 into disrepute, including but not limited to any departure from, or failure to conform  
4 to the standards of acceptable and prevailing medical practice within the  
5 Commonwealth of Kentucky, and any departure from, or failure to conform to the  
6 principles of medical ethics of the American Medical Association or the code of  
7 ethics of the American Osteopathic Association. For the purposes of this subsection,  
8 actual injury to a patient need not be established.

9 (5) Failure by a licensee to report a known or observed violation of KRS Chapter 311  
10 by another licensee as described in KRS 311.606.

11 ➔Section 4. KRS 312.018 is amended to read as follows:

12 (1) No person shall engage or attempt to engage in the practice of chiropractic or hold  
13 himself *or herself* out to be a doctor of chiropractic in Kentucky, unless licensed in  
14 accordance with the provisions of this chapter.

15 (2) The provisions of subsection (1) of this section shall not apply to volunteer health  
16 practitioners providing services under KRS 39A.350 to 39A.366.

17 ➔Section 5. KRS 312.021 is amended to read as follows:

18 (1) No licensed doctor of chiropractic shall advertise or hold himself *or herself* out to  
19 the public in any manner which is false, deceptive, misleading, or as being  
20 especially qualified or advanced in any branch of the practice of chiropractic except  
21 as certified by the board.

22 (2) The board shall identify by administrative regulation, those specialties of the  
23 chiropractic for which certification may be granted and shall establish by  
24 administrative regulation the procedures for obtaining and maintaining such  
25 certification and the fees therefor.