

1 AN ACT relating to prescribing controlled substances.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) There is hereby established the Controlled Substance Prescribing Review and*
6 *Enforcement Advisory Council to provide advice, guidance, and*
7 *recommendations to state licensing boards charged with enforcing and reviewing*
8 *prescribing practices.*

9 *(2) The council shall consist of the following members to be appointed by the*
10 *Governor:*

11 *(a) Four (4) physicians who are licensed in Kentucky, one (1) who is a general*
12 *practitioner, one (1) who is a specialist in pain medicine, one (1) who is an*
13 *oncologist, and one (1) who is a psychiatrist, to be appointed from lists*
14 *provided by the Kentucky Board of Medical Licensure containing the names*
15 *of three (3) physicians for each of the four (4) areas of practice;*

16 *(b) One (1) advanced practice registered nurse who is licensed in Kentucky to*
17 *be appointed from a list provided by the Kentucky Board of Nursing*
18 *containing the names of three (3) advanced practice registered nurses;*

19 *(c) One (1) substance abuse and mental health professional who is licensed in*
20 *Kentucky to be appointed from a list of three (3) professionals provided by*
21 *the Cabinet for Health and Family Services;*

22 *(d) One (1) community mental health center representative to be appointed*
23 *from a list of three (3) individuals provided by the Cabinet for Health and*
24 *Family Services;*

25 *(e) Three (3) pharmacists who are licensed in Kentucky, each of whom shall be*
26 *appointed from one (1) of three (3) separate lists provided by the Kentucky*
27 *Board of Pharmacy containing the names of three (3) pharmacists from*

1 each the following general geographic areas in Kentucky:

2 1. The area west of Interstate 65;

3 2. The area east of Interstate 75; and

4 3. The area between Interstates 65 and 75; and

5 (f) One (1) dentist who is licensed in Kentucky to be appointed from a list of
6 three (3) dentists provided by the Kentucky Board of Dentistry.

7 The lists of recommendations for appointment to the council shall be delivered to
8 the Governor no later than August 1, 2020.

9 (3) Initial appointments to the council shall be for staggered terms, and thereafter
10 members shall serve four (4) year terms. The Governor also shall appoint one (1)
11 member to serve as chair and one (1) member to serve as vice chair.

12 (4) The duties of the council shall include but not be limited to:

13 (a) Providing advice, guidance, and recommendations to assist state licensing
14 boards in expanding their enforcement activities of identifying and
15 eliminating drug abuse, misuse, diversion, and illegal prescription and sale
16 of prescription drugs by their respective licensees; and

17 (b) Developing guidelines for utilizing the electronic system for monitoring
18 Schedules II, III, IV, and V controlled substances established under KRS
19 218A.202 to identify potential problem areas and proactively generate
20 information useful to the particular prescriber and dispenser licensing
21 boards.

22 (5) The council shall work in cooperation with the affected professional licensing
23 boards of practitioners and pharmacists, law enforcement, substance abuse and
24 mental health treatment professionals, and other stakeholders.

25 (6) The council shall meet at regular intervals, and no less than quarterly for the
26 first year of its existence, and at the call of the chair.

27 (7) Support staff, facilities, and resources for the meetings of the council shall be

1 provided as directed by the secretary of the Cabinet for Health and Family
2 Services.

3 (8) Members of the council shall serve at the pleasure of the Governor and without
4 compensation, but shall be reimbursed for actual expenses incurred in the
5 connection with the discharge of their official duties.

6 (9) All cabinet, departments, commissions, boards, agencies, and officers of the state,
7 or any political subdivision thereof, are hereby authorized and directed to
8 cooperate with the council in implementing this section.

9 (10) The council shall provide an annual report to the Governor and the Legislative
10 Research Commission by December 1, 2020, and by December 1 of each year
11 thereafter.

12 ➔Section 2. KRS 218A.205 is amended to read as follows:

13 (1) As used in this section:

14 (a) "Reporting agency" includes:

- 15 1. The Department of Kentucky State Police;
- 16 2. The Office of the Attorney General;
- 17 3. The Cabinet for Health and Family Services; and
- 18 4. The applicable state licensing board; and

19 (b) "State licensing board" means:

- 20 1. The Kentucky Board of Medical Licensure;
- 21 2. The Kentucky Board of Nursing;
- 22 3. The Kentucky Board of Dentistry;
- 23 4. The Kentucky Board of Optometric Examiners;
- 24 5. The State Board of Podiatry; and
- 25 6. Any other board that licenses or regulates a person who is entitled to
- 26 prescribe or dispense controlled substances to humans.

27 (2) (a) When a reporting agency or a law enforcement agency receives a report of

1 improper, inappropriate, or illegal prescribing or dispensing of a controlled
2 substance it may, to the extent otherwise allowed by law, send a copy of the
3 report within three (3) business days to every other reporting agency.

4 (b) A county attorney or Commonwealth's attorney shall notify the Office of the
5 Attorney General and the appropriate state licensing board within three (3)
6 business days of an indictment or a waiver of indictment becoming public in
7 his or her jurisdiction charging a licensed person with a felony offense relating
8 to the manufacture of, trafficking in, prescribing, dispensing, or possession of
9 a controlled substance.

10 (3) Each state licensing board shall, in consultation with the Kentucky Office of Drug
11 Control Policy, establish the following by administrative regulation for those
12 licensees authorized to prescribe or dispense controlled substances:

13 (a) Mandatory prescribing and dispensing standards related to controlled
14 substances, the requirements of which shall include the diagnostic, treatment,
15 review, and other protocols and standards established for Schedule II
16 controlled substances and Schedule III controlled substances containing
17 hydrocodone under KRS 218A.172 and which may include the exemptions
18 authorized by KRS 218A.172(4);

19 (b) In accord with the CDC Guideline for Prescribing Opioids for Chronic Pain
20 published in 2016, a prohibition on a practitioner issuing a prescription for a
21 Schedule II controlled substance for more than a three (3) day supply of a
22 Schedule II controlled substance if the prescription is intended to treat pain as
23 an acute medical condition, with the following exceptions:

24 1. The practitioner, in his or her professional judgment, believes that more
25 than a three (3) day supply of a Schedule II controlled substance is
26 medically necessary to treat the patient's pain as an acute medical
27 condition and the practitioner adequately documents the acute medical

1 condition and lack of alternative treatment options which justifies
2 deviation from the three (3) day supply limit established in this
3 subsection in the patient's medical records;

4 2. The prescription for a Schedule II controlled substance is prescribed to
5 treat chronic pain;

6 3. The prescription for a Schedule II controlled substance is prescribed to
7 treat pain associated with a valid cancer diagnosis;

8 4. The prescription for a Schedule II controlled substance is prescribed to
9 treat pain while the patient is receiving hospice or end-of-life treatment
10 or is receiving care from a certified community based palliative care
11 program;

12 5. The prescription for a Schedule II controlled substance is prescribed as
13 part of a narcotic treatment program licensed by the Cabinet for Health
14 and Family Services;

15 6. The prescription for a Schedule II controlled substance is prescribed to
16 treat pain following a major surgery or the treatment of significant
17 trauma, as defined by the state licensing board in consultation with the
18 Kentucky Office of Drug Control Policy;

19 7. The Schedule II controlled substance is dispensed or administered
20 directly to an ultimate user in an inpatient setting; or

21 8. Any additional treatment scenario deemed medically necessary by the
22 state licensing board in consultation with the Kentucky Office of Drug
23 Control Policy.

24 Nothing in this paragraph shall authorize a state licensing board to promulgate
25 regulations which expand any practitioner's prescriptive authority beyond that
26 which existed prior to June 29, 2017;

27 (c) A prohibition on a practitioner dispensing greater than a forty-eight (48) hour

1 supply of any Schedule II controlled substance or a Schedule III controlled
2 substance containing hydrocodone unless the dispensing is done as part of a
3 narcotic treatment program licensed by the Cabinet for Health and Family
4 Services;

5 (d) A procedure for temporarily suspending, limiting, or restricting a license held
6 by a named licensee where a substantial likelihood exists to believe that the
7 continued unrestricted practice by the named licensee would constitute a
8 danger to the health, welfare, or safety of the licensee's patients or of the
9 general public;

10 (e) A procedure for the expedited review of complaints filed against their
11 licensees pertaining to the improper, inappropriate, or illegal prescribing or
12 dispensing of controlled substances that is designed to commence an
13 investigation within seven (7) days of a complaint being filed and produce a
14 charging decision by the board on the complaint within one hundred twenty
15 (120) days of the receipt of the complaint, unless an extension for a definite
16 period of time is requested by a law enforcement agency due to an ongoing
17 criminal investigation;

18 (f) The establishment and enforcement of licensure standards that conform to the
19 following:

20 1. A permanent ban on licensees and applicants convicted after July 20,
21 2012, in this state or any other state of any felony offense relating to
22 controlled substances from prescribing or dispensing a controlled
23 substance;

24 2. Restrictions short of a permanent ban on licensees and applicants
25 convicted in this state or any other state of any misdemeanor offense
26 relating to prescribing or dispensing a controlled substance;

27 3. Restrictions mirroring in time and scope any disciplinary limitation

- 1 placed on a licensee or applicant by a licensing board of another state if
2 the disciplinary action results from improper, inappropriate, or illegal
3 prescribing or dispensing of controlled substances; and
- 4 4. A requirement that licensees and applicants report to the board any
5 conviction or disciplinary action covered by this subsection with
6 appropriate sanctions for any failure to make this required report;
- 7 (g) A procedure for the continuous submission of all disciplinary and other
8 reportable information to the National Practitioner Data Bank of the United
9 States Department of Health and Human Services;
- 10 (h) If not otherwise required by other law, a process for submitting a query on
11 each applicant for licensure to the National Practitioner Data Bank of the
12 United States Department of Health and Human Services to retrieve any
13 relevant data on the applicant; and
- 14 (i) Continuing education requirements beginning with the first full educational
15 year occurring after July 1, 2012, that specify that at least seven and one-half
16 percent (7.5%) of the continuing education required of the licensed
17 practitioner relate to the use of the electronic monitoring system established in
18 KRS 218A.202, pain management, or addiction disorders.
- 19 (4) For the purposes of pharmacy dispensing, the medical necessity for a Schedule II
20 controlled substance as documented by the practitioner in the patient's medical
21 record and the prescription for more than a three (3) day supply of that controlled
22 substance are presumed to be valid.
- 23 (5) A state licensing board shall consult with a licensed physician and employ or
24 obtain the services of a specialist in prescribing controlled substances~~the~~
25 ~~treatment of pain and a specialist in drug addiction~~ to evaluate information
26 received regarding a licensee's prescribing or dispensing practices related to
27 controlled substances ~~if the board or its staff does not possess such expertise,~~ to

1 ascertain if the licensee under investigation is engaging in improper, inappropriate,
2 or illegal practices.

3 (6) Any statute to the contrary notwithstanding, no state licensing board shall require
4 that a grievance or complaint against a licensee relating to controlled substances be
5 sworn to or notarized, but the grievance or complaint shall identify the name and
6 address of the grievant or complainant, unless the board by administrative
7 regulation authorizes the filing of anonymous complaints. Any such authorizing
8 administrative regulation shall require that an anonymous complaint or grievance be
9 accompanied by sufficient corroborating evidence as would allow the board to
10 believe, based upon a totality of the circumstances, that a reasonable probability
11 exists that the complaint or grievance is meritorious.

12 (7) Every state licensing board shall cooperate to the maximum extent permitted by law
13 with all state, local, and federal law enforcement agencies, and all professional
14 licensing boards and agencies, state and federal, in the United States or its territories
15 in the coordination of actions to deter the improper, inappropriate, or illegal
16 prescribing or dispensing of a controlled substance.

17 (8) Each state licensing board shall require a fingerprint-supported criminal record
18 check by the Department of Kentucky State Police and the Federal Bureau of
19 Investigation of any applicant for initial licensure to practice any profession
20 authorized to prescribe or dispense controlled substances.

21 **(9) Every state licensing board shall promulgate administrative regulations that**
22 **require the board to:**

23 **(a) Review, investigate, and enforce violations of prescribing practices;**

24 **(b) Request that the Office of Inspector General conduct a review using the**
25 **electronic system for monitoring Schedules II, III, IV, and V controlled**
26 **substances established under KRS 218A.202, in order to generate a broad**
27 **sampling of at least fifteen (15) patient charts to be reviewed when a**

- 1 prescribing case is referred to the licensing board by a source other than
2 Office of Inspector General, Cabinet for Health and Family Services;
- 3 (c) Employ investigators with law enforcement or drug task force backgrounds
4 for any prescribing investigation;
- 5 (d) Require a review of a prescriber be performed by physicians practicing
6 within or similar to the prescriber's self-defined or practice-defined
7 specialty;
- 8 (e) Form specific or separate disciplinary panels made up of clinicians who are
9 authorized to prescribe controlled substances to review cases involving
10 controlled substances;
- 11 (f) Focus reviews of prescribers on whether the prescriber's clinical judgment
12 and reasoning supported the necessity for the prescription, for that
13 treatment purpose, at that strength, and for that period of time; and
- 14 (g) Require each reviewer of a prescriber to submit his or her opinion on
15 whether the prescribing practices of a prescriber increase the risk for
16 dependence, abuse, or diversion, or present a harm to patients or the public.
17 If the opinion is affirmative, the board shall take immediate action to
18 restrict the prescriber's prescribing authority.
- 19 (10) Nothing in this section shall prohibit an employer from instituting or
20 implementing stricter standards for medical practice or prescribing than those
21 required by state law.