AN ACT relating to grooming a minor.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 510 IS CREATED TO READ AS FOLLOWS:

(1) A person is guilty of grooming a minor when:

(a) Being eighteen (18) years of age or older, he or she engages in grooming behavior directed at a minor who is under fourteen (14) years old with the intent to entice, coerce, solicit, or induce the minor to engage in sexual conduct with the person or another person; or

(b) Being a person in a position of authority or position of special trust, as those terms are defined in KRS 532.045, he or she engages in grooming behavior directed at a minor who is under eighteen (18) years old with the intent to:

1. Entice, coerce, solicit, or induce the minor to engage in sexual conduct with the person or another person; or

2. Develop an intimate or secretive relationship with the minor.

(2) (a) For a violation of subsection (1)(a) of this section, grooming a minor is a Class A misdemeanor unless the minor is under twelve (12) years old, in which case it is a Class D felony.

(b) For a violation of subsection (1)(b) of this section, grooming a minor is a Class D felony unless the minor is under twelve (12) years old, in which case it is a Class C felony.

(c) Any sentence imposed on a defendant under this section shall run concurrently with any sentence imposed for an offense specified in this chapter arising from the same course of conduct with the same victim.

(3) This section shall not be construed to prevent a person from communicating with a minor for any lawful or legitimate purpose, including but not limited to:

(a) Teaching curriculum on human sexuality or sexually transmitted diseases as provided in KRS 158.1415;

(b) The use of a traceable communication system by a school district employee or volunteer as provided in KRS 160.145;

(c) The diagnosis or treatment of a minor by a health care provider in a health care facility;

(d) Communicating with a minor to determine if the minor is dependent, neglected, or abused;

(e) Age-appropriate conversations about puberty and human sexuality with a minor by the minor's sibling or parent or guardian; and

(f) Any conversation with a minor that is part of a person's job-related or volunteer-related duties.

➔Section 2. KRS 510.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

(1) ***"Adult intermediary" means a person who is eighteen (18) years of age or older and communicates with another for the purpose of procuring or promoting the use of a minor in violation of KRS 510.155;***

(2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose;

(3) "Deviate sexual intercourse" means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another; or penetration of the anus of one person by any body part or a foreign object manipulated by another person. "Deviate sexual intercourse" does not include penetration of the anus by any body part or a foreign object in the course of the performance of generally recognized health-care practices;

(4)~~[(2)]~~ "Forcible compulsion" means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical

injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition;

(5) "Foreign object" means anything used in commission of a sexual act other than the person of the actor;

(6) "Grooming behavior" means a course of conduct directed at a minor that is intended to establish an emotional connection with a minor through manipulation, trust-building, or influence to:

(a) Facilitate future acts of sexual conduct; or

(b) Normalize or desensitize the minor to acts of sexual conduct;

even if no in-person meeting or act of sexual conduct is completed. This conduct may occur online or in person, through third parties, or by other indirect methods to facilitate the manipulation of a minor;

(7) "Individual with an intellectual disability" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period;

(8) ~~[(3)]~~ "Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association;~~[~~

~~(4) "Individual with an intellectual disability" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as defined in KRS Chapter 202B;]~~

(9) ~~[(5)]~~ "Mentally incapacitated" means that a person is rendered temporarily

incapable of appraising or controlling his or her conduct as a result of the influence of an intoxicating substance administered to him or her without his or her consent or as a result of any other act committed upon him or her without his or her consent;

(10) ~~[(6)]~~ "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. "Physically helpless" also includes a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to an act as a result of the influence of a controlled substance or legend drug;

(11) "Registrant" has the same meaning as in KRS 17.500;

(12) "Sexual conduct" has the same meaning as in KRS 531.010;

(13) ~~[(7)]~~ "Sexual contact" means the touching of a person's intimate parts or the touching of the clothing or other material intended to cover the immediate area of a person's intimate parts, if that touching can be construed by a reasonable person as being done:

(a) For the purpose of sexual arousal or gratification of either party;

(b) For a sexual purpose; or

(c) In a sexual manner for the purpose of:

1. Exacting revenge or retribution;

2. Humiliating or degrading; or

3. Punishment; ***and***

(14) ~~[(8)]~~ "Sexual intercourse" means sexual intercourse in its ordinary sense and includes penetration of the sex organs of one person by any body part or a foreign object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight; emission is not required. "Sexual intercourse" does not include penetration of the sex organ by any body part or a foreign object in the course of the performance of generally recognized health-care practices~~[;~~

~~(9) "Foreign object" means anything used in commission of a sexual act other than the~~

~~person of the actor;~~

~~(10) "Registrant" has the same meaning as in KRS 17.500; and~~

~~(11) "Adult intermediary" means a person who is age eighteen (18) years or older, who communicates with another for the purpose of procuring or promoting the use of a minor in violation of KRS 510.155~~].

➔Section 3. KRS 161.120 is amended to read as follows:

(1) Except as described in KRS 161.795, the Education Professional Standards Board may revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, substitute teachers, interns, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees for the following reasons:

(a) Being convicted of, or entering an ~~["]~~Alford~~["]~~ plea or plea of nolo contendere to, notwithstanding an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of the plea, one (1) of the following:

1. A felony;
2. A misdemeanor under KRS Chapter 218A, 508, 509, 510, 522, 525, 529, 530, or 531; or
3. A misdemeanor involving a student or minor.

A certified copy of the conviction or plea shall be conclusive evidence of the conviction or plea;

(b) Having sexual contact as defined in KRS 510.010~~[(7)]~~ with a student or minor. Conviction in a criminal proceeding shall not be a requirement for disciplinary action;

(c) Committing any act that constitutes fraudulent, corrupt, dishonest, or immoral conduct. If the act constitutes a crime, conviction in a criminal proceeding shall not be a condition precedent to disciplinary action;

(d) Demonstrating willful or careless disregard for the health, welfare, or safety of others;

(e) Physical or mental incapacity that prevents the certificate holder from performing duties with reasonable skill, competence, or safety;

(f) Possessing, using, or being under the influence of alcohol, which impairs the performance of duties;

(g) Unlawfully possessing or unlawfully using a drug during the performance of duties;

(h) Incompetency or neglect of duty;

(i) Making, or causing to be made, any false or misleading statement or concealing a material fact in obtaining issuance or renewal of any certificate;

(j) Failing to report as required by subsection (3) of this section;

(k) Failing to comply with an order of the Education Professional Standards Board;

(l) Violating any state statute relating to schools or the teaching profession;

(m) Violating the professional code of ethics for Kentucky school certified personnel established by the Education Professional Standards Board through the promulgation of administrative regulation;

(n) Violating any administrative regulation promulgated by the Education Professional Standards Board or the Kentucky Board of Education; or

(o) Receiving disciplinary action or having the issuance of a certificate denied or restricted by another jurisdiction on grounds that constitute a violation of this subsection.

(2) The Education Professional Standards Board shall respond to complaints against a

certificate holder by the following process:

(a) 1. Except as provided in subparagraph 2. of this paragraph, within thirty (30) calendar days of the receipt of a completed complaint, board staff shall conduct an initial review to determine whether there is sufficient evidence that a violation may have occurred and shall provide notice of the initial determination to the certificate holder within seven (7) business days that shall include the complete copy of the report and all underlying relevant documents and records. If the complaint alleges unauthorized electronic communication as defined in KRS 160.145, sexual contact, or other sexual misconduct, the identity of a complainant that is not the superintendent and any identifying information of the minor involved in the complaint shall remain confidential.

2. When a complaint alleges unauthorized electronic communication, as defined in KRS 160.145, sexual contact, or other sexual misconduct, the board staff shall have one hundred twenty (120) days to conduct the initial review required by subparagraph 1. of this paragraph;

(b) Upon receipt of the notice, the certificate holder shall have thirty (30) calendar days to respond or provide a rebuttal to any complaint that was determined to contain sufficient evidence that a violation may have occurred. The response period shall be extended an additional thirty (30) calendar days upon the certificate holder's written request submitted to the board;

(c) Within ten (10) business days of the receipt of the certificate holder's response or the end of the response period established in paragraph (b) of this subsection, board staff shall conduct another review of the complaint to determine if sufficient evidence exists to support a violation. If the board staff determines that the evidence is:

1. Insufficient, then the board staff shall recommend dismissal and shall

notify the certificate holder and the complainant of the recommendation within seven (7) business days of the determination; or

2. Sufficient, then the board staff shall have seven (7) business days to notify the certificate holder and the complainant of the determination. Notice to the complainant shall only state that further proceedings will occur;

(d) Upon a determination that sufficient evidence exists to support a possible violation, within the notice required under paragraph (c)2. of this subsection, board staff shall initiate an in-person or virtual conference with the certificate holder to share information and to determine if an agreed resolution can be recommended to the board concerning the alleged violation. The conference shall be scheduled within thirty (30) calendar days of the determination. The certificate holder may decline the conference. If the conference does not occur due to the certificate holder's failure to respond within the thirty (30) calendar days, the required conference shall be considered waived. The certificate holder may have an attorney present at the conference;

(e) Upon the conclusion of the thirty (30) calendar days conference period, the board shall act on the complaint within thirty (30) calendar days. If the board fails to act on the complaint within the thirty (30) calendar days, then the complaint shall be considered dismissed. The board shall consider the entirety of the complaint with any associated response or recommended agreed resolution to determine:

1. Dismissal, conditional dismissal upon completion of training, admonishment, further investigation, or initiation of a hearing;

2. Approval of the recommended agreed resolution; or

3. A deferral if:

a. The content of the complaint is subject to ongoing:

i. Criminal investigation or proceedings;

ii. Child abuse, dependency, or neglect investigation by an authorized state agency; or

iii. Teacher tribunal process as provided in KRS 161.790; or

b. The deferral is agreed to by the certificate holder; and

(f) The provision of a confirmation of receipt from the board to the certificate holder whenever the certificate holder submits a response or correspondence to the board.

(3) (a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, address, phone number, Social Security number, and position name of any certified school employee in the ***superintendent's***~~[employee's]~~ district***:***

1. Whose contract is terminated or not renewed, for cause except failure to meet local standards for quality of teaching performance prior to the employee gaining tenure;

2. Who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause;

3. Who is convicted in a criminal prosecution; or

4. Who otherwise may have engaged in any actions or conduct while employed in the school district that might reasonably be expected to warrant consideration for action against the certificate under subsection (1) of this section.

The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) calendar days of the event giving rise to the duty to report.

(b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract

termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, that may warrant action against the certificate under subsection (1) of this section, and shall forward copies of all relevant documents and records in his or her possession.

(c) The Education Professional Standards Board shall provide the superintendent confirmation of receipt of any report submitted by the superintendent within seven (7) business days and shall provide the superintendent with notice of:

1. Whether or not board staff determine that there is sufficient evidence in the report that a violation may have occurred; and
2. Any board action taken against the certificate holder who is the subject of the report.

(d) The Education Professional Standards Board may consider reports and information received from other sources.

(e) The certified school employee shall be given a copy of any report provided to the Education Professional Standards Board by the district superintendent or other sources. The employee shall have the right to file a written rebuttal pursuant to subsection (2) of this section to the report which shall be placed in the official file with the report.

(4) A finding or action by a school superintendent or tribunal does not create a presumption of a violation or lack of a violation of subsection (1) of this section.

(5) The board may issue a written admonishment to the certificate holder if the board determines, based on the evidence, that a violation has occurred that is not of a serious nature. A copy of the written admonishment shall be placed in the official file of the certificate holder. The certificate holder may respond in writing to the admonishment within thirty (30) calendar days of receipt and have that response placed in his or her official certification file. Alternatively, the certificate holder

may file a request for a hearing with the board within thirty (30) calendar days of receipt of the admonishment. Upon receipt of a request for a hearing, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B within thirty (30) calendar days of receipt of the request.

(6) (a) In accordance with the timeline specified in this section, the Education Professional Standards Board shall schedule and conduct a hearing in accordance with KRS Chapter 13B:

1. Upon determining that a complaint warrants possible revoking, suspending, refusing to renew, imposing probationary or supervisory conditions upon, issuing a written reprimand, or any combination of these actions regarding any certificate;
2. After denying an application for a certificate, upon written request filed within thirty (30) calendar days of receipt of the letter advising of the denial; or
3. After issuing a written admonishment, upon written request for a hearing filed within thirty (30) calendar days of receipt of the written admonishment.

(b) If after the hearing required under paragraph (a) of this subsection is scheduled and the certificate holder or applicant believes the hearing is not timely, the certificate holder or applicant may submit a request for an expedited hearing, and the hearing shall be conducted within sixty (60) calendar days of the request.

(c) Upon request, a hearing may be public or private at the discretion of the certified employee or applicant.

(d) The hearing shall be conducted before a hearing officer secured by the board pursuant to KRS 13B.030 and the board may:

1. Employ hearing officers;
2. Contract with another agency for hearing officers;
3. Contract with private attorneys through personal service contracts; or
4. Secure a hearing officer from the Attorney General's office.

(e) The hearing shall afford the certificate holder all the rights secured under KRS Chapter 13B.

(7) The Education Professional Standards Board or its chair may take emergency action pursuant to KRS 13B.125. Emergency action shall not affect a certificate holder's contract or tenure rights in the school district.

(8) If the Education Professional Standards Board substantiates that sexual contact occurred between a certified employee and a student or minor, the employee's certificate may be revoked or suspended with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. The Education Professional Standards Board may require the employee to pay a specified amount for mental health services for the student or minor which are needed as a result of the sexual contact.

(9) At any time during the investigative or hearing processes, the board may enter into an agreed order or accept an assurance of voluntary compliance with the certificate holder.

(10) The board may reconsider, modify, or reverse its decision on any disciplinary action.

(11) ***(a)*** Suspension of a certificate shall be for a specified period of time, not to exceed two (2) years.

(b)~~[(a)]~~ At the conclusion of the specified period, upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the certificate shall be reactivated.

(c)~~[(b)]~~ A suspended certificate is subject to expiration and termination.

(12) ***(a)*** Revocation of a certificate is a permanent forfeiture. The board shall establish the minimum period of time before an applicant can apply for a new certificate.

(b)~~[(a)]~~ At the conclusion of the specified period, and upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the applicant shall bear the burden of proof to show that he or she is again fit for practice.

(c)~~[(b)]~~ The board shall have discretion to impose conditions that it deems reasonably appropriate to ensure the applicant's fitness and the protection of public safety. Any conditions imposed by the board shall address or apply to only that time period after the revocation of the certificate.

(13) An appeal from any final order of the Education Professional Standards Board shall be filed in Franklin Circuit Court or the Circuit Court of the county in which the certificate holder was employed when the incident occurred in accordance with KRS ***13B.140***~~[Chapter 13B which provides that all final orders of an agency shall be subject to judicial review]~~.

➔Section 4. KRS 309.362 is amended to read as follows:

(1) The board may deny or refuse to renew a license, may suspend or revoke a license, may issue an administrative reprimand, or may impose probationary conditions or fines not to exceed one thousand dollars ($1,000) per violation when the licensee has engaged in unprofessional conduct that has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct shall include the following:

(a) Obtaining or attempting to obtain a license by fraud, misrepresentation, concealment of material facts, or making a false statement to the board;

(b) Being convicted of a felony in any court if the act or acts for which the licensee or applicant for license was convicted are determined by the board to

have a direct bearing on whether the person is trustworthy to serve the public as a licensed massage therapist, if in accordance with KRS Chapter 335B. "Conviction," as used in this paragraph, ***includes*** ~~[shall include]~~ a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere in a court of law;

(c) Violating any lawful order or administrative regulation promulgated by the board;

(d) Violating any provision of this chapter or administrative regulations promulgated ***under this chapter*** ~~[thereunder]~~;

(e) Having sexual contact as defined ***in*** ~~[by]~~ KRS 510.010~~[(7)]~~ with a client or having engaged or attempted to engage in lewd or immoral conduct with any client or patient;

(f) Engaging in fraud or material deception in the delivery of professional services, including reimbursement or advertising services, in a false or misleading manner;

(g) Evidence of gross negligence or gross incompetence in the practice of massage therapy;

(h) Violating the standards of practice or the code of ethics as promulgated by administrative regulations;

(i) Violating KRS 304.39-215; or

(j) Engaging in conduct that is subject to the penalties under KRS 304.99-060(4) or (5).

(2) The board may, at its discretion, deny, refuse to renew, suspend or revoke a license, or impose probationary conditions following an administrative hearing pursuant to KRS Chapter 13B and in accordance with administrative regulations promulgated by the board.

(3) The surrender of a license shall not deprive the board of jurisdiction to proceed with

disciplinary actions under KRS 309.350 to 309.364.

➔Section 5. KRS 311.595 is amended to read as follows:

If the power has not been transferred by statute to some other board, commission, or agency of ***the Commonwealth***~~[this state]~~, the board may deny an application or reregistration for a license; place a licensee on probation for a period not to exceed five (5) years; suspend a license for a period not to exceed five (5) years; limit or restrict a license for an indefinite period; or revoke any license ~~[heretofore or hereafter]~~issued by the board, upon proof that the licensee has:

(1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing, in connection with an application for a license or permit;

(2) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license;

(3) Committed, procured, or aided in the procurement of an unlawful abortion, including a partial-birth abortion or an abortion in violation of KRS 311.731;

(4) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky of a crime as defined in KRS 335B.010, if in accordance with KRS Chapter 335B;

(5) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510 ***or KRS***~~[,]~~ 530.064(1)(a)~~[,]~~ or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010~~[(7)]~~ with a patient while the patient was under the care of the physician;

(6) Become addicted to a controlled substance;

(7) Become a chronic or persistent alcoholic;

(8) Been unable or is unable to practice medicine according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition including but not limited to physical deterioration that adversely affects

cognitive, motor, or perceptive skills, or by reason of an extended absence from the active practice of medicine;

(9) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member ***of the public*** ~~[thereof]~~;

(10) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his ***or her*** profession;

(11) Employed, as a practitioner of medicine or osteopathy in the practice of his ***or her*** profession in ***the Commonwealth*** ~~[this state]~~, any person not duly licensed or otherwise aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art;

(12) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act, including but not limited to the code of conduct promulgated by the board under KRS 311.601 or any other valid regulation of the board;

(13) Violated any agreed order, letter of agreement, final order, or emergency order issued by the board;

(14) Engaged in or attempted to engage in the practice of medicine or osteopathy under a false or assumed name, or impersonated another practitioner of a like, similar, or different name;

(15) Obtained a fee or other thing of value on the fraudulent representation that a manifestly incurable condition could be cured;

(16) Willfully violated a confidential communication;

(17) Had his ***or her*** license to practice medicine or osteopathy in any other state, territory, or foreign nation revoked, suspended, restricted, or limited or has been subjected to other disciplinary action by the licensing authority thereof. This subsection shall not require relitigation of the disciplinary action;

(18) Failed or refused, without legal justification, to practice medicine in a rural area of ***the Commonwealth***~~[this state]~~ in violation of a valid medical scholarship loan contract with the trustees of the rural Kentucky medical scholarship fund;

(19) Given or received, directly or indirectly, from any person, firm, or corporation, any fee, commission, rebate, or other form of compensation for sending, referring, or otherwise inducing a person to communicate with a person licensed under KRS 311.530 to 311.620 in his ***or her*** professional capacity or for any professional services not actually and personally rendered**.**~~[; provided,]~~ However, ~~[that nothing contained in]~~this subsection shall ***not*** prohibit persons holding valid and current licenses under KRS 311.530 to 311.620 from practicing medicine in partnership or association or in a professional service corporation authorized by KRS Chapter 274, as ~~[now or hereinafter]~~amended, or from pooling, sharing, dividing, or apportioning the fees and moneys received by them or by the partnership, corporation, or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association. ~~[Nothing contained in]~~This subsection shall ***not*** abrogate the right of two (2) or more persons holding valid and current licenses under KRS 311.530 to 311.620 to receive adequate compensation for concurrently rendering professional care to a single patient and divide a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and responsibility assumed by each;

(20) Been removed, suspended, expelled, or disciplined by any professional medical association or society when the action was based upon what the association or society found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action;

(21) Been disciplined by a licensed hospital or medical staff of the hospital, including

removal, suspension, limitation of hospital privileges, failing to renew privileges for cause, resignation of privileges under pressure or investigation, or other disciplinary action if the action was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action;

(22) Failed to comply with the requirements of KRS 213.101, 311.782, or 311.783 or failed to submit to the Vital Statistics Branch in accordance with a court order a complete report as described in KRS 213.101;

(23) Failed to comply with any of the requirements regarding making or maintaining medical records or documents described in KRS 311.7704 or 311.7707;

(24) Failed to comply with the requirements of KRS 311.7705 or 311.7706;

(25) Been convicted of female genital mutilation under KRS 508.125, which shall result in mandatory revocation of a license;

(26) As provided in KRS 311.824(2), been convicted of a violation of KRS 311.823(2); or

(27) Failed to comply with the requirements of KRS 311.732.

➔Section 6. KRS 311A.050 is amended to read as follows:

(1) ***A***~~[No]~~ person shall ***not***:

(a) Call or hold himself or herself out as or use the title of emergency medical technician, advanced emergency medical technician, emergency medical responder, paramedic, advanced practice paramedic, emergency medical services educator, paramedic course coordinator, emergency medical services medical director, mobile integrated healthcare program medical director, or any other member of emergency medical services personnel unless licensed or certified under the provisions of this chapter. The provisions of this paragraph shall not apply if the board does not license or certify a person as an instructor

in a particular discipline regulated by the board;

(b) Operate or offer to operate or represent or advertise the operation of a school or other educational program for emergency medical services personnel unless the school or educational program has been approved and licensed under the provisions of this chapter. The provisions of this paragraph shall not apply to continuing education provided by a licensed ambulance service for anyone certified or licensed by the board given by an ambulance service for its employees or volunteers; or

(c) Knowingly employ emergency medical services personnel unless that person is licensed or certified under the provisions of this chapter.

(2) ***A***~~[No]~~ person ***who is*** licensed or certified by the board or~~[who is]~~ an applicant for licensure or certification by the board shall ***not***:

(a) If licensed or certified, violate any provision of this chapter or any administrative regulation promulgated by the board;

(b) Use fraud or deceit in obtaining or attempting to obtain a license or certification from the board, or be granted a license upon mistake of a material fact;

(c) If licensed or certified by the board, grossly negligently or willfully act in a manner inconsistent with the practice of the discipline for which the person is certified or licensed;

(d) Be unfit or incompetent to practice a discipline regulated by the board by reason of negligence or other causes;

(e) Abuse, misuse, or misappropriate any drugs placed in the custody of the licensee or certified person for administration, or for use of others;

(f) Falsify or fail to make essential entries on essential records;

(g) Be convicted of a misdemeanor which involved acts that bear directly on the qualifications or ability of the applicant, licensee, or certified person to

practice the discipline for which the person is an applicant, licensee, or certified person, if in accordance with KRS Chapter 335B;

(h) Be convicted of a misdemeanor which involved fraud, deceit, breach of trust, or physical harm or endangerment to self or others, acts that bear directly on the qualifications or ability of the applicant, licensee, or certificate holder to practice acts in the license or certification held or sought, if in accordance with KRS Chapter 335B;

(i) Be convicted of a misdemeanor offense under KRS Chapter 510 involving a patient or be found by the board to have had sexual contact as defined in KRS 510.010~~[(7)]~~ with a patient while the patient was under the care of the licensee or certificate holder;

(j) Have had his or her license or credential to practice as a nurse or physician denied, limited, suspended, probated, revoked, or otherwise disciplined in Kentucky or in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth;

(k) Have a license or certification to practice in any activity regulated by the board denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license or certification to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth;

(l) Violate any lawful order or directive previously entered by the board;

(m) Have been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(n) Be convicted of, have entered a guilty plea to, or have entered an Alford plea to a felony offense, if in accordance with KRS Chapter 335B.

(3) It shall be unlawful for an employer of a person licensed or certified by the board

having knowledge of the facts to refrain from reporting to the board on an official complaint form approved by the board through administrative regulation any person licensed or certified by the board who:

(a) Has been convicted of, has entered a guilty plea to, or has entered an Alford plea to a felony offense;

(b) Has been convicted of a misdemeanor or felony which involved acts that bear directly on the qualifications or ability of the applicant, licensee, or certified person to practice the discipline for which they are an applicant, licensee, or certified person;

(c) Is reasonably suspected of fraud or deceit in procuring or attempting to procure a license or certification from the board;

(d) Is reasonably suspected of grossly negligently or willfully acting in a manner inconsistent with the practice of the discipline for which they are certified or licensed;

(e) Is reasonably suspected of being unfit or incompetent to practice a discipline regulated by the board by reason of negligence or other causes, including but not limited to being unable to practice the discipline for which they are licensed or certified with reasonable skill or safety;

(f) Is reasonably suspected of violating any provisions of this chapter or the administrative regulations promulgated under this chapter;

(g) Has a license or certification to practice an activity regulated by the board denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license or certification to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth;

(h) Is practicing an activity regulated by the board without a current active license or certification issued by the board;

(i) Is reasonably suspected of abusing, misusing, or misappropriating any drugs placed in the custody of the licensee or certified person for administration or for use of others; or

(j) Is suspected of falsifying or in a grossly negligent manner making incorrect entries or failing to make essential entries on essential records.

(4) A person who violates subsection (1)(a), (b), or (c) of this section shall be guilty of a Class A misdemeanor for ***the*** ~~[a]~~ first offense and a Class D felony for each subsequent offense.

(5) ~~[The provisions of]~~This section shall not preclude prosecution for the unlawful practice of medicine, nursing, or other practice certified or licensed by an agency of the Commonwealth.

(6) The filing of criminal charges or a criminal conviction for violation of the provisions of this chapter or the administrative regulations promulgated ***under this chapter*** ~~[thereunder]~~ shall not preclude the office of the board from instituting or imposing board disciplinary action authorized by this chapter against any person or organization violating this chapter or the administrative regulations promulgated ***under this chapter*** ~~[thereunder]~~.

(7) The institution or imposition of disciplinary action by the office of the board against any person or organization violating the provisions of this chapter or the administrative regulations promulgated ***under this chapter*** ~~[thereunder]~~ shall not preclude the filing of criminal charges against or a criminal conviction of any person or organization for violation of the provisions of this chapter or the administrative regulations promulgated ***under this chapter*** ~~[thereunder]~~.

➔Section 7. KRS 314.091 is amended to read as follows:

(1) The board shall have power to reprimand, deny, limit, revoke, probate, or suspend any license or credential to practice nursing issued by the board or applied for in accordance with this chapter or the privilege to practice as a nurse recognized by

the board in accordance with this chapter, or to otherwise discipline a licensee, credential holder, privilege holder, or applicant, or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license, credential, or privilege to practice nursing;

(b) Has been convicted of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty, under the laws of any state or of the United States, if in accordance with KRS Chapter 335B. The record of conviction or a copy ***of the conviction*** ~~[thereof]~~, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;

(c) Has been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510 ***or KRS*** ~~[,]~~ 530.064(1)(a) ~~[,]~~ or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010 ~~[(7)]~~ with a patient while the patient was under the care of the nurse;

(d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;

(e) Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;

(f) Abuses controlled substances, prescription medications, illegal substances, or alcohol;

(g) Has misused or misappropriated any drugs placed in the custody of the nurse for administration, or for use of others;

(h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on essential records;

(i) Has a license, privilege, or credential to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license or privilege to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth, including action by another jurisdiction for failure to repay a student loan;

(j) Has violated any of the provisions of this chapter;

(k) Has violated any lawful order or directive previously entered by the board;

(l) Has violated any administrative regulation promulgated by the board;

(m) Has been listed on either the adult caregiver misconduct registry or the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property, or has a substantiated finding or judicial finding of the abuse or neglect of a child;

(n) Has violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law;

(o) Used or possessed a Schedule I controlled substance;

(p) Has used or been impaired as a consequence of the use of alcohol or drugs while practicing as a nurse;

(q) Has violated KRS 304.39-215;

(r) Has engaged in conduct that is subject to the penalties under KRS 304.99-060(4) or (5); or

(s) As provided in KRS 311.824(2), has been convicted of a violation of KRS 311.823(2).

(2) All hearings shall be conducted in accordance with KRS Chapter 13B. A suspended or revoked license, privilege, or credential may be reinstated at the discretion of the

board, and in accordance with regulations promulgated by the board.

(3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in ***the Commonwealth***~~[this state]~~.

(4) At all hearings on request of the board the Attorney General of ***the Commonwealth***~~[this state]~~ or one (1) of the assistant attorneys general designated by the Attorney General shall appear and represent the board.

(5) A final order of the board shall be by majority vote thereof.

(6) Any person adversely affected by any final order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B.

(7) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license, privilege, or credential may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

(8) The board may, by administrative regulation, provide for the recovery of the costs of an administrative hearing.

➔Section 8. KRS 319C.070 is amended to read as follows:

The board may deny an application or reregistration for a license, place a licensee on probation for a period not to exceed five (5) years, suspend a license for a period not to exceed five (5) years, limit or restrict a license for an indefinite period, or revoke any license issued by the board, upon proof that the licensee has:

(1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing, in connection with an application for a license or permit;

(2) Practiced, or aided or abetted in the practice of, fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license;

(3) Entered a guilty or nolo contendere plea, or been convicted, of a crime as defined in KRS 335B.010, if in accordance with KRS Chapter 335B;

(4) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510~~[,]~~ or KRS 530.064(1)(a) or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010~~[(7)]~~ with a patient while the patient was under the care of the licensee;

(5) Become addicted to a controlled substance;

(6) Become a chronic or persistent alcoholic;

(7) Been unable or is unable to practice applied behavior analysis according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition, including but not limited to physical deterioration that adversely affects cognitive, motor, or perceptive skills, or by reason of an extended absence from the active practice of applied behavior analysis;

(8) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member ***of the public***~~[thereof]~~; or

(9) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his ***or her*** profession.

➔Section 9. KRS 319C.110 is amended to read as follows:

(1) The board, after due notice and an opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B, may take any one (1) or a combination of the following actions against any applied behavior analyst or

applied assistant behavior analyst licensee or applicant:

(a) Refuse to license or certify any applicant;

(b) Refuse to renew the license or certificate of any person;

(c) Suspend or revoke or place on probation the license or certificate of any person;

(d) Impose restrictions on the scope of practice of any person;

(e) Issue an administrative reprimand to any person;

(f) Issue a private admonishment to any person; and

(g) Impose fines for violations of this chapter, not to exceed two thousand five hundred dollars ($2,500).

(2) The following acts by a licensee may be considered cause for disciplinary action:

(a) Indulgence in excessive use of alcoholic beverages or abusive use of controlled substances that impairs the licensee's ability to practice applied behavior analysis;

(b) Engaging in, permitting, or attempting to engage in or permit the performance of substandard patient care by himself or herself or by persons working under his or her supervision due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;

(c) Having engaged in or attempted to engage in a course of lewd or immoral conduct with any person while that person is a patient or client of the behavior analyst or assistant behavior analyst;

(d) Having sexual contact, as defined ***in***~~[by]~~ KRS 510.010~~[(7)]~~, without the consent of both parties, with an employee or coworker of the licensee;

(e) Sexually harassing an employee or coworker of the licensee;

(f) Conviction of a felony or misdemeanor in the courts of ***the Commonwealth***~~[this state]~~ or any other state, territory, or country which affects his or her ability to continue to practice competently and safely on the

public. ~~["Conviction,"]~~As used in this paragraph, ***"conviction" includes***~~[shall include]~~ a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;

(g) Obtaining or attempting to obtain a license by fraud or material misrepresentation or making any other false statement to the board;

(h) Engaging in fraud or material deception in the delivery of professional services, including reimbursement, or in advertising services in a false or misleading manner;

(i) Evidence of gross negligence or gross incompetence in his or her practice of behavior analysis;

(j) Documentation of being declared mentally disabled by a court of competent jurisdiction and not thereafter having had his or her rights restored;

(k) Failing or refusing to obey any lawful order or administrative regulation of the board;

(l) Promoting for personal gain an unnecessary device, treatment, procedure, or service, or directing or requiring a patient to purchase a device, treatment, procedure, or service from a facility or business in which he or she has a financial interest; and

(m) Being impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently.

(3) A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee or applicant.

➔Section 10. KRS 327.070 is amended to read as follows:

(1) The board, after due notice and an opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B may take any one (1) or a

combination of the following actions against any licensee, certificate holder, or applicant:

(a) Refuse to license or certify any applicant;

(b) Refuse to renew the license or certificate of any person;

(c) Suspend or revoke or place on probation the license or certificate of any person;

(d) Impose restrictions on the scope of practice of any person;

(e) Issue an administrative reprimand to any person;

(f) Issue a private admonishment to any person; and

(g) Impose fines for violations of this chapter not to exceed two thousand five hundred dollars ($2,500).

(2) The following acts by a licensee, certificate holder, or applicant may be considered cause for disciplinary action:

(a) Indulgence in excessive use of alcoholic beverages or abusive use of controlled substances;

(b) Engaging in, permitting, or attempting to engage in or permit the performance of substandard patient care by himself ***or herself*** or by persons working under his ***or her*** supervision due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;

(c) Having engaged in or attempted to engage in a course of lewd or immoral conduct with any person:

1. While that person is a patient of a health care facility ***as*** defined ***in*** ~~[by]~~ KRS 216B.015**,** where the physical therapist or physical therapist's assistant provides physical therapy services; or

2. While that person is a patient or client of the physical therapist or physical therapist's assistant;

(d) Having sexual contact, as defined ***in*** ~~[by]~~ KRS 510.010~~[(7)]~~, without the

consent of both parties, with an employee or coworker of the licensee or certificate holder;

(e) Sexually harassing an employee or coworker of the licensee or certificate holder;

(f) Conviction of a felony or misdemeanor in the courts of ***the Commonwealth*** ~~[this state]~~ or any other state, territory, or country which affects his ***or her*** ability to continue to practice competently and safely on the public, if in accordance with KRS Chapter 335B. ~~["Conviction,"]~~As used in this paragraph, ***"conviction" includes*** ~~[shall include]~~ a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;

(g) Obtaining or attempting to obtain a license or certificate by fraud or material misrepresentation or making any other false statement to the board;

(h) Engaging in fraud or material deception in the delivery of professional services, including reimbursement, or advertising services in a false or misleading manner;

(i) Evidence of gross negligence or gross incompetence in his ***or her*** practice of physical therapy;

(j) Documentation of being declared mentally disabled by a court of competent jurisdiction ***without*** ~~[and not thereafter]~~ having had his ***or her*** rights restored;

(k) Failing or refusing to obey any lawful order or administrative regulation of the board;

(l) Promoting for personal gain an unnecessary device, treatment, procedure, or service, or directing or requiring a patient to purchase a device, treatment, procedure, or service from a facility or business in which he ***or she*** has a financial interest;

(m) Being impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently;

(n) Violation of KRS 304.39-215; and

(o) Conduct that is subject to the penalties under KRS 304.99-060(4) or (5).

(3) A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee, certificate holder, or applicant.

➔Section 11. KRS 335.150 is amended to read as follows:

(1) The board may revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; impose an administrative fine; issue a written reprimand or admonishment; or any combination of actions regarding any applicant, license, or licensee upon proof that the applicant or licensee has:

(a) Committed any act of dishonesty or corruption, if in accordance with KRS Chapter 335B. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon conviction of the crime, the judgment and sentence creates a rebuttable presumption at the ensuing disciplinary hearing of the guilt of the applicant or licensee. Conviction includes all instances in which a plea of no contest is the basis of the conviction;

(b) Misrepresented or concealed a material fact in obtaining a license, or in reinstatement thereof;

(c) Committed any unfair, false, misleading, or deceptive act or practice;

(d) Been incompetent or negligent in the practice of social work;

(e) Violated any state statute or administrative regulation governing the practice of social work or any activities undertaken by a social worker;

(f) Failed to comply with an order issued by the board or an assurance of voluntary compliance;

(g) Violated the code of ethical conduct as set forth by the board by promulgation

of an administrative regulation;

(h) Been legally declared mentally incompetent;

(i) Aided or abetted another person in falsely procuring or attempting to procure a license; or

(j) Aided or abetted an unlicensed person in the practice of social work.

(2) Five (5) years from the date of a revocation, any person whose license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license upon a finding that the individual has complied with any terms prescribed by the board and is again able to engage competently in the practice of social work.

(3) If an alleged violation is not of a serious nature and the evidence presented to the board, after the investigation and appropriate opportunity for the licensee to respond, provides a clear indication that the alleged violation did in fact occur, the board may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response within thirty (30) days of its receipt and to have the response placed in the licensee's permanent file. Alternatively, the licensee may file a request for a hearing, within thirty (30) days of the receipt of the written admonishment. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing.

(4) At any time during the investigative or hearing processes, the board may enter into an agreed order with, or accept an assurance of voluntary compliance from, the licensee that effectively satisfies the complaint.

(5) The board may reconsider, modify, or reverse its decision regarding probation, suspension, or any other disciplinary action.

(6) Upon proof substantiating that sexual contact occurred between a social worker licensed by the board and a client while the client was under the care of or in a

professional relationship with the social worker, the social worker's license may be revoked or suspended with mandatory treatment of the social worker as prescribed by the board. The board may require the social worker to pay a specified amount for mental health services for the client which are needed as a result of the sexual contact.

(7) The board may revoke the license of a social worker if the social worker has been convicted of a misdemeanor offense under KRS Chapter 510 involving a client or a felony offense under KRS Chapter 510 ***or KRS*** ~~[,]~~ 530.064(1)(a) ~~[,]~~ or 531.310, or has been found to have had sexual contact as defined in KRS 510.010 ~~[(7)]~~ with a client while the client was under the care of the social worker.