

1 AN ACT relating to licensees authorized to prescribe or dispense controlled
2 substances.

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

4 ➔Section 1. KRS 218A.205 is amended to read as follows:

5 (1) As used in this section:

6 (a) "Reporting agency" includes:

- 7 1. The Department of Kentucky State Police;
- 8 2. The Office of the Attorney General;
- 9 3. The Cabinet for Health and Family Services; and
- 10 4. The applicable state licensing board; and

11 (b) "State licensing board" means:

- 12 1. The Kentucky Board of Medical Licensure;
- 13 2. The Kentucky Board of Nursing;
- 14 3. The Kentucky Board of Dentistry;
- 15 4. The Kentucky Board of Optometric Examiners;
- 16 5. The State Board of Podiatry; and
- 17 6. Any other board that licenses or regulates a person who is entitled to
18 prescribe or dispense controlled substances to humans.

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

23 (b) A county attorney or Commonwealth's attorney shall notify the Office of the
24 Attorney General and the appropriate state licensing board within three (3)
25 business days of an indictment or a waiver of indictment becoming public in
26 his or her jurisdiction charging a licensed person with a felony offense
27 relating to the manufacture of, trafficking in, prescribing, dispensing, or

1 possession of a controlled substance.

2 (3) Each state licensing board shall, in consultation with the Kentucky Office of Drug
3 Control Policy, establish the following by administrative regulation **promulgated in**
4 **accordance with KRS Chapter 13A** for those licensees authorized to prescribe or
5 dispense controlled substances:

6 (a) Mandatory prescribing and dispensing standards related to controlled
7 substances, the requirements of which shall include the diagnostic, treatment,
8 review, and other protocols and standards established for Schedule II
9 controlled substances and Schedule III controlled substances containing
10 hydrocodone under KRS 218A.172 and which may include the exemptions
11 authorized by KRS 218A.172(4);

12 (b) In **accordance**~~[accord]~~ with the CDC Guideline for Prescribing Opioids for
13 Chronic Pain published in 2016, a prohibition on a practitioner issuing a
14 prescription for a Schedule II controlled substance for more than a three (3)
15 day supply of a Schedule II controlled substance if the prescription is intended
16 to treat pain as an acute medical condition, with the following exceptions:

17 1. The practitioner, in his or her professional judgment, believes that more
18 than a three (3) day supply of a Schedule II controlled substance is
19 medically necessary to treat the patient's pain as an acute medical
20 condition and the practitioner adequately documents the acute medical
21 condition and lack of alternative treatment options which justifies
22 deviation from the three (3) day supply limit established in this
23 subsection in the patient's medical records;

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

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

- 1 4. The prescription for a Schedule II controlled substance is prescribed to
- 2 treat pain while the patient is receiving hospice or end-of-life treatment
- 3 or is receiving care from a certified community based palliative care
- 4 program;
- 5 5. The prescription for a Schedule II controlled substance is prescribed as
- 6 part of a narcotic treatment program licensed by the Cabinet for Health
- 7 and Family Services;
- 8 6. The prescription for a Schedule II controlled substance is prescribed to
- 9 treat pain following a major surgery or the treatment of significant
- 10 trauma, as defined by the state licensing board in consultation with the
- 11 Kentucky Office of Drug Control Policy;
- 12 7. The Schedule II controlled substance is dispensed or administered
- 13 directly to an ultimate user in an inpatient setting; or
- 14 8. Any additional treatment scenario deemed medically necessary by the
- 15 state licensing board in consultation with the Kentucky Office of Drug
- 16 Control Policy.

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

- 20 (c) A prohibition on a practitioner dispensing greater than a forty-eight (48) hour
- 21 supply of any Schedule II controlled substance or a Schedule III controlled
- 22 substance containing hydrocodone unless the dispensing is done as part of a
- 23 narcotic treatment program licensed by the Cabinet for Health and Family
- 24 Services;
- 25 (d) A procedure for temporarily suspending, limiting, or restricting a license held
- 26 by a named licensee where a substantial likelihood exists to believe that the
- 27 continued unrestricted practice by the named licensee would constitute a

danger to the health, welfare, or safety of the licensee's patients or of the general public;

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

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

13 1. **Restrictions that may include** a[permanent] ban **regarding a licensee's**
14 **or applicant's ability to prescribe or dispense controlled substances**
15 **if** on licensees and applicants] convicted[after July 20, 2012,] in this
16 state or any other state of a[any] felony offense **regarding the licensee's**
17 **or applicant's**[relating to controlled substances from] prescribing or
18 dispensing a controlled substance;

19 2. Restrictions **that may include**[short of] a[permanent] ban on licensees
20 and applicants convicted in this state or any other state of any
21 misdemeanor offense relating to prescribing or dispensing a controlled
22 substance;

23 3. Restrictions mirroring in time and scope any disciplinary limitation
24 placed on a licensee or applicant by a licensing board of another state if
25 the disciplinary action results from improper, inappropriate, or illegal
26 prescribing or dispensing of controlled substances; and

27 4. A requirement that licensees and applicants report to the board any

conviction or disciplinary action covered by this subsection with appropriate sanctions for any failure to make this required report;

(g) A procedure for the continuous submission of all disciplinary and other reportable information to the National Practitioner Data Bank of the United States Department of Health and Human Services;

(h) If not otherwise required by other law, a process for submitting a query on each applicant for licensure to the National Practitioner Data Bank of the United States Department of Health and Human Services to retrieve any relevant data on the applicant; and

(i) Continuing education requirements beginning with the first full educational year occurring after July 1, 2012, that specify that at least seven and one-half percent (7.5%) of the continuing education required of the licensed practitioner relate to the use of the electronic monitoring system established in KRS 218A.202, pain management, or addiction disorders.

(4) For the purposes of pharmacy dispensing, the medical necessity for a Schedule II controlled substance as documented by the practitioner in the patient's medical record and the prescription for more than a three (3) day supply of that controlled substance are presumed to be valid.

(5) A state licensing board shall employ or obtain the services of a specialist in the treatment of pain and a specialist in drug addiction to evaluate information received regarding a licensee's prescribing or dispensing practices related to controlled substances if the board or its staff does not possess such expertise, to ascertain if the licensee under investigation is engaging in improper, inappropriate, or illegal practices.

(6) Any statute to the contrary notwithstanding, no state licensing board shall require that a grievance or complaint against a licensee relating to controlled substances be sworn to or notarized, but the grievance or complaint shall identify the name and

1 address of the grievant or complainant, unless the board by administrative
2 regulation authorizes the filing of anonymous complaints. Any such authorizing
3 administrative regulation shall require that an anonymous complaint or grievance be
4 accompanied by sufficient corroborating evidence as would allow the board to
5 believe, based upon a totality of the circumstances, that a reasonable probability
6 exists that the complaint or grievance is meritorious.

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

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