

201 KAR 9:260. Professional standards for prescribing and dispensing controlled substances.

RELATES TO: KRS 218A.172, 218A.205, 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licenses. KRS 218A.205(3)(a) and (b) require the board, in consultation with the Kentucky Office of Drug Control Policy, to establish mandatory prescribing and dispensing standards related to controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. This administrative regulation establishes the professional standards for prescribing and dispensing controlled substances.

Section 1. Applicability. (1) A physician who is authorized to prescribe or dispense a controlled substance shall comply with the standards of acceptable and prevailing medical practice for prescribing and dispensing a controlled substance established in this administrative regulation.

(2) The professional standards established in this administrative regulation shall not apply to a physician prescribing or dispensing a controlled substance:

(a) To a patient as part of the patient's hospice or end-of-life treatment;

(b) To a patient admitted to a licensed hospital as an inpatient, outpatient, or observation patient, during and as part of a normal and expected part of the patient's course of care at that hospital;

(c) To a patient for the treatment of pain associated with cancer or with the treatment of cancer;

(d) To a patient who is a registered resident of a long-term-care facility as defined in KRS 216.510;

(e) During the effective period of any period of disaster or mass casualties which has a direct impact upon the physician's practice;

(f) In a single dose to relieve the anxiety, pain, or discomfort experienced by that patient submitting to a diagnostic test or procedure;

(g) That has been classified as a Schedule V controlled substance;

(h) That is a Schedule II controlled substance as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services; or

(i) 1. That is a Schedule II controlled substance prescribed or administered immediately prior to, during, or within the fourteen (14) days following:

a. A major surgery, being any operative or invasive procedure or a delivery; or

b. A significant trauma, being any acute blunt, blast, or penetrating bodily injury that has a risk of death, physical disability, or impairment; and

2. The usage does not extend beyond fourteen (14) days.

Section 2. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes and Monitoring. (1) Each physician prescribing or dispensing a controlled substance shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to enable the board to determine whether the physician is conforming to professional standards for prescribing or dispensing controlled substances and other relevant professional standards.

(2) If a physician is unable to conform to professional standards for prescribing or dispensing controlled substances due to circumstances beyond the physician's control, or the physician makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the physician shall document those circumstances in the patient's record and only prescribe or dispense a controlled substance to the patient if the patient record appropriately justifies the prescribing or dispensing of a controlled substance under the circumstances.

Section 3. Professional Standards for the Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. Prior to the initial prescribing or dispensing of any controlled substance for pain or other symptoms associated with the same primary medical complaint, the first physician prescribing or dispensing a controlled substance shall:

(1) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and:

(a) If the complaint does not relate to a psychiatric condition, conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record; or

(b) If the complaint relates to a psychiatric condition, perform, or have performed by a psychiatrist or other designated mental health provider, an evaluation appropriate to the presenting complaint and document the relevant findings;

(2) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the evaluation and treatment of the patient;

(3) After examining the benefits and risks of prescribing or dispensing a controlled substance to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance in the amount specified;

(4) Only prescribe or dispense Schedule II controlled substances in accordance with the standards established in Section 9 of this administrative regulation;

(5) Not prescribe or dispense a long-acting or controlled-release opioid (e.g. OxyContin, fentanyl patches, or methadone) for acute pain that is not directly related to and close in time to a specific surgical procedure;

(6) Explain to the patient that a controlled substance used to treat an acute medical complaint is for time-limited use, and that the patient should discontinue the use of the controlled substance when the condition requiring the controlled substance use has resolved; and

(7) Explain to the patient how to safely use and properly dispose of any unused controlled substance.

Section 4. Professional Standards for Commencing Long Term Use of Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) Before a physician commences to prescribe or dispense any controlled substance to a patient sixteen (16) years or older for pain or other symptoms associated with the same primary medical complaint for a total period of longer than three (3) months, the physician shall comply with the mandatory professional standards established in subsection (2) of this section. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician if:

(a) Each practitioner involved has lawful access to the patient's medical record;

- (b) There is compliance with all applicable standards; and
- (c) Each practitioner performing an action to meet the required standards is acting within the practitioner's legal scope of practice.

(2)(a) The physician shall obtain the following information from the patient and record all relevant information in the patient's medical record:

1. History of present illness;
2. Past medical history;
3. History of substance use and any prior treatment for that use by the patient, and history of substance abuse by first degree relatives of the patient;
4. Past family history of relevant illnesses and treatment; and
5. Psychosocial history.

(b) The physician shall conduct an appropriate physical examination of the patient sufficient to support the medical indications for prescribing or dispensing a controlled substance on a long-term basis.

(c) The physician shall perform appropriate baseline assessments to establish beginning values to assist in establishing and periodically evaluating the functional goals of any treatment plan.

(d) If a specific or specialized evaluation is necessary for the formulation of a working diagnosis or treatment plan, the physician shall only continue the use of a controlled substance after determining that continued use of the controlled substance is safe and medically appropriate in the absence of that information.

(e) If the physician determines that the patient has previously received medical treatment for the presenting medical complaint or related symptoms and that review of the prior treatment records is necessary to justify long-term prescribing of a controlled substance, the physician shall obtain those prior medical records and incorporate the information therein into the evaluation and treatment of the patient.

(f)1. Based upon consideration of all information available, the physician shall promptly formulate and document a working diagnosis of the source of the patient's medical complaint and related symptoms without simply describing or listing the related symptoms.

2. If the physician is unable, despite best efforts, to formulate a working diagnosis, the physician shall consider the usefulness of additional information, such as a specialized evaluation or assessment, referral to an appropriate specialist, and the usefulness of further observation and evaluation, before attempting again to formulate a working diagnosis.

3. If the physician is unable to formulate a working diagnosis, despite the use of an appropriate specialized evaluation or assessment, the physician shall only prescribe long term use of a controlled substance after establishing that its use at a specific level is medically indicated and appropriate.

(g)1. To the extent that functional improvement is medically expected based upon the patient's condition, the physician shall formulate an appropriate treatment plan.

2. The treatment plan shall include specific and verifiable goals of treatment, with a schedule for periodic evaluations.

(h)1. The physician shall utilize appropriate screening tools to screen each patient to determine if the patient:

- a. Is presently suffering from another medical condition which may impact the prescribing or dispensing of a controlled substance; or
- b. Presents a significant risk for illegal diversion of a controlled substance.

2. If, after screening, the physician determines that there is a reasonable likelihood that the patient suffers from substance abuse or dependence, or a psychiatric or psychological condition, the physician shall take the necessary actions to facilitate a referral to an appropriate

treatment program or provider. The physician shall appropriately incorporate the information from the treatment program or provider into the evaluation and treatment of the patient.

3. If, after screening, the physician determines that there is a risk that the patient may illegally divert a controlled substance, but determines to continue long term prescribing of the controlled substance, the physician shall use a prescribing agreement that meets professional standards. The prescribing agreement and informed consent document may be combined into one (1) document.

4. The physician shall obtain and document a baseline drug screen.

5. If, after screening, the physician determines that the controlled substance prescribed to the patient will be used or is likely to be used other than medicinally or other than for an accepted therapeutic purpose, the physician shall not prescribe any controlled substance to that patient.

(i) After explaining the risks and benefits of long-term use of a controlled substance, the physician shall obtain the written informed consent of the patient in a manner that meets professional standards.

(j) The physician shall initially attempt, to the extent possible, or establish and document a previous attempt by another physician, of a trial of noncontrolled modalities and lower doses of a controlled substance in increasing order to treat the pain and related symptoms associated with the primary medical complaint, before continuing with long term prescribing of a controlled substance at a given level.

Section 5. Professional Standards for Continuing Long Term Prescribing or Dispensing of Controlled Substances for the Treatment of Pain and Related Symptoms Associated with a Primary Medical Complaint. (1) If a physician continues to prescribe or dispense a controlled substance beyond three (3) months to a patient sixteen (16) years or older for pain and related symptoms associated with the primary medical complaint, the physician shall comply with the professional standards established in subsection (2) of this section and, if a Schedule II controlled substance, Section 9 of this administrative regulation. These standards may be accomplished by different licensed practitioners in a single group practice at the direction of or on behalf of the prescribing physician as established in Section 4(1) of this administrative regulation.

(2)(a)1. The physician shall ensure that the patient is seen at least once a month initially for evaluation and review of progress. The physician may determine that the patient is to be evaluated less frequently, on a schedule determined by the physician's professional judgment after the physician has determined:

a. The controlled substance prescribed or dispensed has been titrated to the level appropriate and necessary to treat the medical complaint and related symptoms;

b. The controlled substance prescribed or dispensed is not causing unacceptable side effects; and

c. There is sufficient monitoring in place to minimize the likelihood that the patient will use the controlled substance in an improper or inappropriate manner or divert it for an improper or inappropriate use.

(b) At appropriate intervals, the physician shall:

1. Ensure that a current history is obtained from the patient;

2. Ensure that a focused physical examination is considered, and performed, if appropriate; and

3. Perform appropriate measurable examinations as indicated in the treatment plan.

(c) At appropriate intervals, the physician shall evaluate the working diagnosis and treatment plan based upon the information gained to determine whether there has been functional improvement or any change in baseline measures. The physician shall modify the diagnosis,

treatment plan, or controlled substance therapy, as appropriate.

(d) If the physician determines that the patient presents a significant risk of diversion or improper use of a controlled substance, the physician shall discontinue the use of the controlled substance or justify its continued use in the patient record.

(e) If the medical complaint and related symptoms continue with no significant improvement in function despite treatment with a controlled substance, and if improvement is medically expected, the physician shall obtain appropriate consultative assistance to determine whether there are undiagnosed conditions to be addressed in order to resolve the medical complaint.

(f) For a patient exhibiting symptoms suggestive of a mood, anxiety, or psychotic disorder, the physician shall obtain a psychiatric or psychological consultation for intervention if appropriate.

(g) If a patient reports experiencing episodes of breakthrough pain, the physician shall:

1. Attempt to identify the trigger or triggers for each episode;

2. Determine whether the breakthrough pain may be adequately treated through noncontrolled treatment; and

3. If the physician determines that the nonmedication treatments do not adequately address the triggers, and after considering the risks and benefits, determines to add an as-needed controlled substance to the regimen, take appropriate steps to minimize the improper or illegal use of the additional controlled substance.

(h) At least once a year, the physician shall perform or shall ensure that the patient's primary treating physician performs a preventive health screening and physical examination appropriate to the patient's gender, age, and medical condition.

(i)1. At least once every three (3) months, the physician shall obtain and review a current KASPER report, for the twelve (12) month period immediately preceding the request, and appropriately use that information in the evaluation and treatment of the patient.

2. If the physician obtains or receives specific information that the patient is not taking the controlled substance as directed, is diverting a controlled substance, or is engaged in any improper or illegal use of a controlled substance, the physician shall immediately obtain and review a KASPER report and appropriately use the information in the evaluation and treatment of the patient.

3. If a KASPER report discloses that the patient is obtaining a controlled substance from another practitioner without the physician's knowledge and approval, in a manner that raises suspicion of illegal diversion, the physician shall promptly notify the other practitioner of the relevant information from the KASPER review.

4. The physician shall obtain consultative assistance from a specialist if appropriate.

(j) If appropriate, the physician shall conduct random pill counts and appropriately use that information in the evaluation and treatment of the patient.

(k)1. During the course of long-term prescribing or dispensing of a controlled substance, the physician shall utilize drug screens, appropriate to the controlled substance and the patient's condition, in a random and unannounced manner at appropriate times. If the drug screen or other information available to the physician indicates that the patient is noncompliant, the physician shall:

a. Do a controlled taper, consistent with subparagraph 3 of this paragraph;

b. Stop prescribing or dispensing the controlled substance immediately; or

c. Refer the patient to an addiction specialist, mental health professional, pain management specialist, or drug treatment program, depending upon the circumstances.

2. The physician shall discontinue controlled substance treatment or refer the patient to addiction management if:

a. There has been no improvement in function and response to the medical complaint and

related symptoms, if improvement is medically expected;

b. Controlled substance therapy has produced significant adverse effects, including instances such as an overdose or events leading to hospitalization or disability;

c. The patient exhibits inappropriate drug-seeking behavior or diversion; or

d. The patient is taking a high-risk regimen, such as dosages \geq fifty (50) MME/day or opioids with benzodiazepines, without evidence of benefit.

3. The physician shall:

a. Taper controlled substances in a manner slow enough to minimize symptoms and signs of opioid withdrawal; and

b. Collaborate with other specialists as needed to optimize nonopioid pain management and psychosocial support for anxiety related to the taper.

4. A physician shall stop prescribing or dispensing any controlled substance diverted by or from the patient or taken less frequently than once a day.

Section 6. Professional Standards for the Prescribing and Dispensing of Controlled Substances in an Emergency Department. In addition to complying with the standards for the initial prescribing or dispensing of a controlled substance as established in Sections 3 and 7 of this administrative regulation, a physician prescribing or dispensing a controlled substance for a specific medical complaint and related symptoms to a patient in an emergency department shall not routinely:

(1) Administer an intravenous controlled substance for the relief of acute exacerbations of chronic pain, unless intravenous administration is the only medically appropriate means of delivery;

(2) Provide a replacement prescription for a controlled substance that was lost, destroyed, or stolen;

(3) Provide a replacement dose of methadone, suboxone, or subutex for a patient in a treatment program;

(4) Prescribe a long-acting or controlled-release controlled substance, such as OxyContin, fentanyl patches, or methadone or a replacement dose of that medication;

(5) Administer Meperidine to the patient; or

(6) Prescribe or dispense more than the minimum amount medically necessary to treat the patient's medical condition until the patient can be seen by the primary treating physician or another physician, with no refills. If the controlled substance prescription exceeds seven (7) days in length or exceeds three (3) days if a Schedule II controlled substance, the patient record shall justify the amount of the controlled substance prescribed.

Section 7. Professional Standards for the Prescribing and Dispensing of Controlled Substances for the Treatment of Other Conditions. (1) Before initially prescribing or dispensing a controlled substance to a patient for a condition other than pain, the physician shall:

(a) Obtain an appropriate medical history relevant to the medical complaint, including a history of present illness, and:

1. If the complaint does not relate to a psychiatric condition, conduct a physical examination of the patient relevant to the medical complaint and related symptoms and document the information in the patient's medical record; or

2. If the complaint relates to a psychiatric condition, perform, or have performed by a psychiatrist or other designated mental health provider, an evaluation appropriate to the presenting complaint and document the relevant findings;

(b) Obtain and review a KASPER report for that patient, for the twelve (12) month period immediately preceding the patient encounter, and appropriately utilize that information in the

evaluation and treatment of the patient;

(c) After examining the benefits and risks of prescribing or dispensing a controlled substance to the patient, including nontreatment or other treatment, make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance in the amount specified;

(d) Avoid providing more controlled substances than necessary by prescribing or dispensing only the amount of a controlled substance needed to treat the specific medical complaint;

(e) Explain to the patient that a controlled substance used to treat an acute medical complaint is for time-limited use, and that the patient should discontinue the use of a controlled substance when the condition requiring the controlled substance use has resolved; and

(f) Explain to the patient how to safely use and properly dispose of any unused controlled substance.

(2) If the physician continues to prescribe or dispense a controlled substance to a patient for the same medical complaint and related symptoms, the physician shall fully conform to the standards of acceptable and prevailing practice for treatment of that medical complaint and for the use of the controlled substance.

(3) If a physician receives a request from an established patient to prescribe or dispense a limited amount of a controlled substance to assist the patient in responding to the anxiety or depression resulting from a nonrecurring single episode or event, the physician shall:

(a) Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the patient request and appropriately utilize the information obtained in the evaluation and treatment of the patient;

(b) Make a deliberate decision that it is medically appropriate to prescribe or dispense the controlled substance in the amount specified, with or without requiring a personal encounter with the patient to obtain a more detailed history or to conduct a physical examination; and

(c) If the decision is made that it is medically appropriate to prescribe or dispense the controlled substance, prescribe or dispense the minimum amount of the controlled substance to appropriately treat the situational anxiety or depression.

Section 8. Responsibility to Educate Patients Regarding the Dangers of Controlled Substance Use. (1) A physician prescribing or dispensing a controlled substance shall take appropriate steps to educate a patient receiving a controlled substance.

(2) Educational materials relating to these subjects may be found on the board's Web site, www.kbml.ky.gov.

Section 9. Additional Standards for Prescribing or Dispensing Schedule II Controlled Substances. (1) In addition to the other standards established in this administrative regulation, prior to the initial prescribing or dispensing of a Schedule II controlled substance to a human patient, a physician shall:

(a) Obtain a medical history and conduct a physical or mental health examination of the patient, as appropriate to the patient's medical complaint, and document the information in the patient's medical record;

(b) Query KASPER for all available data on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and treatment of the patient;

(c) Make a written plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian

or health care surrogate, including the risk of tolerance and drug dependence; and

(e) Obtain written consent for the treatment.

(2) In addition to the other standards established in this administrative regulation, for purposes of treating pain as or related to an acute medical condition, a physician shall not prescribe or dispense more than a three (3) day supply of a Schedule II controlled substance, unless the physician determines that more than a three (3) day supply is medically necessary and the physician documents the acute medical condition and lack of alternative medical treatment options to justify the amount of the controlled substance prescribed or dispensed.

(3)(a) In addition to the other standards established in this administrative regulation, a physician prescribing or dispensing additional amounts of a Schedule II controlled substance for the same medical complaint and related symptoms shall:

1. Review, at reasonable intervals based on the patient's individual circumstances and course of treatment, the plan of care;

2. Provide to the patient any new information about the treatment; and

3. Modify or terminate the treatment as appropriate.

(b) If the course of treatment extends beyond three (3) months, the physician shall:

1. Query KASPER no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and

2. Review that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance.

(4) To the extent not already required by the standards established in this administrative regulation, for each patient for whom a physician prescribes or dispenses a Schedule II controlled substance, the physician shall keep accurate, readily accessible, and complete medical records which include, as appropriate:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed or dispensed;

(h) Instructions and agreements, and

(i) Periodic reviews of the patient's file.

(5) The additional standards for prescribing or dispensing a Schedule II controlled substance established in this section shall not apply to:

(a)1. A physician prescribing or administering that controlled substance immediately prior to, during, or within the fourteen (14) days following:

a. A major surgery, being any operative or invasive procedure or a delivery; or

b. A significant trauma, being any acute blunt, blast, or penetrating bodily injury that has a risk of death, physical disability, or impairment; and

2. If the prescribing or administering is medically related to the operative or invasive procedure or delivery with medication usage that does not extend beyond the fourteen (14) days; or

(b) A physician prescribing or dispensing that controlled substance:

1. For administration in a hospital or long-term-care facility if the hospital or long-term-care facility with an institutional account, or a physician in those hospitals or facilities if no institutional account exists, queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query, within twelve (12) hours of the patient's or resident's admission, and places a copy of the query in the patient's or resident's medical records for use during the duration of the patient's stay at the facility;

2. As part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;
3. As part of the patient's hospice or end-of-life treatment;
4. For the treatment of pain associated with cancer or with the treatment of cancer;
5. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;
6. Within seven (7) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing:
 - a. Is done as a substitute for the initial prescribing or dispensing;
 - b. Cancels any refills for the initial prescription; and
 - c. Requires the patient to dispose of any remaining unconsumed medication;
7. Within ninety (90) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing is done by another physician in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or
8. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department for Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health.

Section 10. Violations. (1) Any violation of the professional standards established in this administrative regulation shall constitute a violation of KRS 311.595(12) and (9), which may result in the imposition of disciplinary sanctions by the board, pursuant to KRS 311.595.

(2) Each violation of the professional standards established in this administrative regulation shall be established by expert testimony by one (1) or more physicians retained by the board, following a review of the licensee's patient records and other available information including KASPER reports. (39 Ky.R. 671; 1177; 1668; 2002; eff. 3-4-2013; 44 Ky.R. 265, 736, 905; eff. 11-15-2017.)