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Steven L. Beshear
Governor

MEMORANDUM

FROM: Morgan Ransdell, Prosecuting Attorney *MR*

TO: Pamela C. Hagan, MSN, RN, APRN Education & Practice Consultant

RE: APRN Prescription Limits and the Practice of Simultaneously Writing Multiple Prescriptions for a Controlled Substance for a Single Patient

DATE: December 5, 2014

This memorandum concludes that it is unlawful for an APRN to write multiple controlled substance prescriptions at one time, for a single drug and for a single patient, where doing so has the effect of circumventing the applicable prescribing limit.

Summary of APRN Prescribing Limits

SCHEDULE II -- Pursuant to KRS 314.011(8)(a), an APRN with a DEA number and a CAPA-CS may prescribe a seventy-two (72) hour supply of a Schedule II controlled substance, with no refills. An exception to this limit allows an APRN with a DEA number, a CAPA-CS, and certification as a psychiatric-mental health nurse practitioner to prescribe a thirty (30) day supply of a Schedule II psychostimulant, with no refills. Though hydrocodone was reclassified to a Schedule II drug effective October 6, 2014, drugs containing hydrocodone, when prescribed by Kentucky APRNs are subject to the prescription limits applicable to Schedule III drugs. See, KRS 218A.020(3).

SCHEDULE III -- Pursuant to KRS 314.011(8)(b), an APRN with a DEA number and a CAPA-CS may prescribe a thirty (30) day supply of a Schedule III controlled substance, with no refills.

LIMITED SCHEDULE IV -- Pursuant to 201 KAR 20:059, an APRN with a DEA number and a CAPA-CS may prescribe a thirty (30) day supply of the following Schedule IV controlled substance, with no refills: diazepam (Valium); clonazepam (Klonopin); lorazepam (Ativan), alprazolam (Xanax), and carisoprodol (Soma).

SCHEDULE IV and SCHEDULE V -- Except where limited by 201 KAR 20:059, an APRN with a DEA number and a CAPA-CS may provide an original prescription and refills not to exceed a six (6) month supply of Schedule IV and Schedule V controlled substances.

The foregoing APRN prescribing limits are summarized on the attached chart prepared by the staff of the Kentucky Board of Pharmacy. It should be noted that the prescription limits specified on the previous page are premised on the controlled substance designations found in Kentucky statutes and regulations, as opposed to federal statutes and regulations; therefore, products containing butalbital and pentazocine are regarded as Schedule III controlled substances, as is phenobarbital. See, 902 KAR 55: 025. Though not scheduled federally, nalbuphine is a Schedule IV controlled substance in Kentucky. Specific products listed on the U.S. D.E.A. Exempt Prescription Products List are exempt from the prescription limits stated above. See 21 C.F.R. §1308.32 and 902 KAR 55:045.

ANALYSIS OF 21 CFR 1306.12

It has been argued that an applicable federal law (21 CFR 1306.12) permits an APRN with a CAPA-CS and a DEA number to simultaneously write multiple controlled substance prescriptions, for a single drug and for a single patient, to be filled in a serial manner that would exceed the prescription limits described above. For example, an APRN with a CAPA-CS and a DEA number might assert it is lawful, upon seeing and assessing a patient, to simultaneously write three (3) Schedule II controlled substance prescriptions for oxycodone, each for a three (3) day period. By doing this, the APRN has effectively written a nine (9) day supply of a Schedule II controlled substance, without intermediate assessments or office visits during the nine (9) day period. The applicable APRN prescribing limit for oxycodone is a three (3) day supply with no refills. The Board's Investigation and Discipline Section staff recently reached a consensus that, notwithstanding 21 CFR 1306.12, the foregoing practice contravenes the applicable prescribing limit and therefore violates Kentucky nursing laws. This interpretation of Kentucky nursing laws has not yet been reviewed by a Kentucky court.

21 CFR 1306.12 states:

- (a) The refilling of a prescription for a controlled substance listed in Schedule II is prohibited.
- (b)(1) An individual practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance provided the following conditions are met:
 - (i) Each separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice;

(ii) The individual practitioner provides written instructions on each prescription (other than the first prescription, if the prescribing practitioner intends for that prescription to be filled immediately) indicating the earliest date on which a pharmacy may fill each prescription;

(iii) The individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse;

(iv) The issuance of multiple prescriptions as described in this section is permissible under the applicable state laws; and

(v) The individual practitioner complies fully with all other applicable requirements under the Act and these regulations as well as any additional requirements under state law.

(2) Nothing in this paragraph (b) shall be construed as mandating or encouraging individual practitioners to issue multiple prescriptions or to see their patients only once every 90 days when prescribing Schedule II controlled substances. Rather, individual practitioners must determine on their own, based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue multiple prescriptions and how often to see their patients when doing so.

Upon consideration of the foregoing federal regulation, it is clear that the regulation is inconsistent with the prescription limits set forth at KRS 314.011(8) and 201 KAR 20:059. Under the "modern" or Restatement rule, the applicable law in a conflict of laws case is decided by determining which jurisdiction has the "most significant relationship" to a given issue. A court or administrative tribunal, subject to constitutional limitations, must follow the directions of its legislature. The court must apply a local statutory provision directed to choice of law provided that it would be constitutional to do so. Rest. 2d Confl. § 6. The above-quoted federal regulation is a law of general application to all persons who hold DEA licenses. Conversely, KRS 314.011(8) and 201 KAR 20:059 are much narrower in scope, with specific application only to Kentucky APRNs who hold a DEA license and a CAPA-CS. Because the Kentucky Board of Nursing was formed and operates by virtue of the enactments of the General Assembly contained at KRS Chapter 314, and the regulations enacted thereunder, the more restrictive prescription limits set forth at KRS 314.011(8) and 201 KAR 20:059 apply to Kentucky APRNs in matters before the Kentucky Board of Nursing.

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CONCLUSION

In future cases, and unless and until a court or legislative body dictates otherwise, when a staff member of the KBN Investigation and Discipline Section learns that an APRN has engaged in the practice of simultaneously writing multiple controlled substance prescriptions, for a single drug and for a single patient, in a manner that contravenes the applicable prescribing limit, Board staff will file administrative complaints regarding this practice and will seek appropriate remedial action. Please feel free to contact me if you have any questions or concerns regarding this matter.

Nurse Practitioner Guidelines

KRS 314.011 and 201 KAR 20:059 (see actual law for further details)

Drug	Days of Supply	Refills
CII's	72 hours	no
CII's psychostimulants*	30 days	no
diazepam	30 days	no
clonazepam	30 days	no
lorazepam	30 days	no
alprazolam	30 days	no
hydrocodone combinations	30 days	no
carisoprodol	30 days	no
CIII's	30 days	no
CIV-V's	not to exceed 6 month supply	not to exceed 6 month supply

(e.g, Adderall type products)

*ARNP must be certified in psychiatric-mental health and serving in a health facility or regional mental health-mental retardation services program.