

Straight from the Horses Mouth: A KBN Update

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Disclosures:

I have no relevant financial or nonfinancial relationships to disclose.

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Kentucky Board of Nursing is a Regulatory Agency

The Kentucky Board of Nursing protects the public by development and enforcement of state laws governing the safe practice of nurses, dialysis technicians, and licensed certified professional midwives.

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Who is “The Board”?

- State government agency
- Seventeen (17) members appointed by the Governor
 - Ten (10) Registered Nurse Members
 - One (1) APRN Member
 - One (1) APRN, CRNA Member
 - Three (3) Licensed Practical Nurse Members
 - Two (2) Citizens-at-Large
- Among the seventeen (17) appointed members, two (2) members are required to be appointed from each of the six (6) congressional districts

Members serve four (4) year terms

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Kentucky Board of Nursing Activities

- Implement Kentucky Nursing Law through creation of Regulations
- Issue Advisory Opinions about safe practice
- Approve PONS: Pre-licensure, LCPM, PN, RN, APRN
- Issue APRN, RN, LPN and LCPM licenses
- Issue DT and SANE Credentials
- Maintain SRNA registry
- Approve Continuing Education Providers
- Administer special programs as directed by legislature
- Investigate Complaints/Disciplinary Action
- Ensure Compliance with Disciplinary Decisions
- Continuing Education Competency
- Nursing Incentive Scholarship Fund

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Professional Scope of Practice

- Nursing scope of practice refers to the activities that a nurse is considered both authorized and competent to perform.
- Established by Nursing professional Organizations
- Are often incorporated by reference within regulation

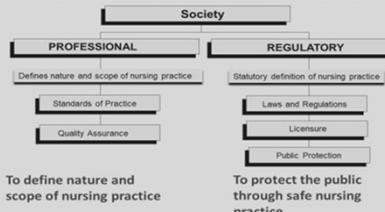
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Kentucky APRN Nurse Practice Act (NPA)/Practice Authority

- Practice authority describes the extent to which a nurse practitioner may practice independently.
- Is defined and clarified through statute and regulation

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Professional Organization vs Regulatory Agency



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Statutes that pertain to APRN Practice

- KRS 314.011 (8) Definitions for chapter.
<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=48246>
- KRS 314.042 License to practice as an advanced practice registered nurse -- Application -- Renewal -- Reinstatement -- Use of "APRN" -- Prescriptive authority under CAPA-NS and CAPA-CS -- Exemption from CAPA-NS requirement --Administrative regulations.
<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=51271>

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Regulations that pertain to APRN Practice

- 201 KAR 20: 056 Advanced practice registered nurse licensure and certification requirements
<https://apps.legislature.ky.gov/law/kar/titles/201/020/056/>
- 201 KAR 20:057 Scope and standards of practice of advanced practice registered nurses.
<https://apps.legislature.ky.gov/law/kar/titles/201/020/057/>
- 201 KAR 20:065 Professional standards for prescribing Buprenorphine-MonoProduct or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.
<https://apps.legislature.ky.gov/law/kar/titles/201/020/065/>

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Advisory Opinion Statements

- The Kentucky Board of Nursing issues advisory opinions as to what constitutes safe nursing practice.
- As such, an opinion is not a regulation of the Board and does not have the force and effect of law.
- It is issued as a guideline to licensees who wish to engage in safe nursing practice, and to facilitate the delivery of safe, effective nursing care to the public

<https://kbn.ky.gov/Practice/Pages/Advisory-Opinion-Statements-Index.aspx>

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Determining Scope of Practice

Determining scope of practice includes:

- Advanced practice education in a role and specialty
- Legal implications (e.g. compliance with the Nursing Practice Act and Board Regulations)
- Scope of practice statements as published by national professional specialty and advanced practice nursing organizations

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Question to ask related to scope of practice

An APRN may wish to ask the following question to help determine whether a new activity/procedure can be incorporated into an individual's scope of practice:

1. Is it prohibited by the nursing law, regulations, advisory opinions, or other local, state, federal laws?
2. Is it permitted by the nursing law, regulations, advisory opinions, or other local, state, federal law?
3. Is it consistent with one's education in the role and specialty?
4. Is it consistent with the scope of one's recognized title or does it evolve into another advanced practice title recognized by the board requiring additional formal education and legal recognition?
5. Is it consistent with evidence-based care?
6. Is it consistent with reasonable and prudent practice?
7. Are you willing to accept accountability and liability for the activity and outcomes?

<https://kbn.ky.gov/General/Documents/aprn-scope-of-practice-decision-making-model.pdf>

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Considerations for adding New procedures and/or Patient Care Activities

- Identify the benefit for a new patient care activity, taking into consideration consumer demand, standards for safe practice, and interest of the advanced practice registered nurse.
- Ensure that **state or federal statutes and regulations** do not constrain the advanced practice registered nurse from incorporating the activity into practice.
- Identify **established professional standards**, if available, supporting the performance of the new activity.
- Establish goals and methods for learning that encompass knowledge and skills acquisition through which competence is attained.
- Demonstrate competent performance of the procedure/activity.
- **Maintain records that reflect the acquisition and maintenance of competency.**

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FAQs



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Requirements for Prescriptive Authority

Prescribing of Controlled Substances (CS):

- Provided that an APRN has been prescribing for **one (1) or more years**, the APRN is required to upload the following documents in the KBN APRN Portal:
 - A Notification of a CAPA-CS form,
 - DEA registration, and
 - KASPER Master account

Prescribing of Non-Scheduled Legend Drugs (NS):

- An APRN may enter into a collaborative agreement for prescriptive authority for non-scheduled drugs with a licensed Kentucky physician upon receiving licensure.
- Provided that an APRN has entered into a CAPA-NS agreement, the APRN must upload the following documents in the KBN APRN Portal:
 - A Notification of a CAPA-NS form
- An APRN who has been prescribing non-controlled substances for four (4) or more years may send in the Notification to Discontinue the CAPA-NS after four (4) years form. Upon submission the APRN then be exempt from needing to a CAPA-NS. [See KRS 314.042 (9)(c)]. **There is no exemption for controlled substances.**

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Nurse Licensure Compact

- The Nurse Licensure Compact (NLC) allows a RN and LPN to possess a multistate license, which permits practice in both the home state and other compact states, while maintaining a primary state of residence (PSOR).
- **Currently, there is no APRN Compact.** An APRN will be required to endorse their license to practice in states outside of Kentucky.
- PSOR is not related to property ownership in a given state. It is about your legal residency status (voting, filing of taxes, driver's license).
- A multistate RN/LPN license issued by the home state is valid in all compact states.
- As long as the PSOR does not change, a nurse can practice in all compact states on an active compact license in good standing issued by the home state.
- To practice in noncompact states, you must apply for a single-state license with the appropriate board of nursing.
- When a nurse becomes licensed in Kentucky, they are automatically issued a multistate license unless the nurse does not qualify to receive one. In such cases, the nurse may be eligible to receive a single state Kentucky license.

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Medical Order Scope of Treatment (MOST)

- The statute that addresses the Medical order for scope of treatment form is KRS 311.6225
- MOST forms require a physician signature

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Role of FNP in Behavioral Health

- A Nurse Practitioner's scope of practice is not based on the "setting", but the educational preparation and national certification related to the scopes and standards....and patient needs.
- **The focus of care for the FNP is the medically stable patient across the lifespan, in the context of the family and community.**
- The FNP is educated to provide continual and comprehensive wellness and illness care to children and adults through disease management, health promotion, health education and preventive health services.
- **PMHNPs, have extensive education in psychiatry to provide in-depth assessments of patients with mental health disorders.**
- According to the Psychiatric-Mental Health Nursing: Scope and Standards of Practice, psychiatric-mental health nurses work in a variety of settings across the continuum of care to promote mental health "through the assessment, diagnosis, and treatment of behavioral problems, mental disorders, and comorbid conditions across the lifespan" (ANA, APNA, ISPN, 2014, p.19). They work with persons experiencing "physical, psychological, mental, and spiritual distress" (p. 19)

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Primary Care Practitioner in Acute Care

- Acute Care Nurse Practitioners (ACNP), are educated, certified, and licensed to care for those individuals who are **physiologically unstable, technologically dependent, critically ill, highly vulnerable to complications, have rapidly changing conditions or have an illness which is chronically complex.**
- Since scope of practice is defined by the patient's needs an Acute Care Nurse Practitioner may care for patients who fall within their scope of practice in any setting.
- The National Organization of Nurse Practitioner Faculties in collaboration with the American Association of Colleges of Nursing, defines the **Primary Care Nurse Practitioner** as one who is educated, certified, and licensed to provide **comprehensive, chronic, continuous care characterized by a long-term relationship with the patient.**
- A Primary Care Nurse Practitioner may work in almost any setting provided that the needs of the patients for whom they are providing care, do not require the expertise of an Acute Care Nurse Practitioner **due to acute onset physiologic instability.**

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Dual Certification

- KBN will reflect two population foci per designation on our online validation. If you are certified in more than one population foci, the APRN may upload the information to KBN for inclusion on our website.
- **Providing proof of dual certification:**
 - KBN will reflect two population foci per designation. If an APRN is currently certified in more than one population focus, the APRN may send that information to the KBN for inclusion on our website. An APRN does not need to apply for licensure again. The second proof of certification may be uploaded to the APRN portal at: APRN Portal/APRN Update.
 - Uploading proof of certification/recertification to the APRN Portal is the only way this documentation will be accepted by the KBN if you have a current, active APRN license.

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NEWS: Elimination of the DEA-X Waiver

- The X-waiver is a Drug Enforcement Administration (DEA) certification that allowed clinicians to prescribe buprenorphine (Suboxone) for treating patients who struggle with opioid addiction.
- On December 29, 2022, the President signed the omnibus appropriations bill. The House passed the measure on December 23, 2022, after the Senate passed it the day before. With the bill's passage, the requirement that healthcare providers possess a DEA X-waiver to prescribe buprenorphine to treat opioid use disorder was eliminated, effective immediately.
- The bill also introduced new training requirements for all prescribers. These requirements will not go into effect until June 21, 2023. The DEA and Substance Abuse and Health Services Administration (SAMHSA) are working to provide further guidance. The Board understands that the DEA will follow up with additional information on these requirements in the near future.

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News: KBN to Launch New licensing System

- The KBN will be launching a new licensure system beginning at the end of March.
- The Optimal Regulatory Board System (ORBS) is a system designed by the National Council of State Boards of Nursing that enables a Board of Nursing to streamline license management and discipline enforcement across the lifespan of a nurse.
- Web links and instructions will be posted on the KBN website

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KBN Discipline Process

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APRN Investigator

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Disclosure

I have no conflicts of interests to disclose in relation to this program/presentation

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Mission of the Board

The mission of the Board is to protect the public and to maintain the integrity of the nursing profession
The Board accomplishes this through education, research, discipline and monitoring

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The Complaint

- Complaints can originate from the public, co-workers, health care facilities, various other agencies (Office of the Inspector General, Drug Enforcement Agency, etc.), self-reports
- Kentucky is a mandatory reporting state: any person, including the licensee, must report suspected violations of nursing law
- KBN has a methodical process to investigate complaints which can result in closing the complaint (no evidence of an infraction), informal discipline (letter of concern or consent decree) or formal, reportable determination (agreed orders: reprimand, limited/probation)

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The Complaint

- Formal discipline is reported to Nursys and the National Practitioner Data Base (NPDM)
- Reportable discipline remains on the record, but is updated when all the terms are met, and the case is closed
- Informal discipline does not appear on any public sites
- Both types of discipline can include a civil penalty and CEUs on a topic, over and above the number required for renewal
- Limited/probation orders will include certain restrictions on a license for a period of time

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The Complaint

- Licensees have the right to an attorney and the right to appeal a Board decision
- First step after an appeal would be an administrative hearing
- An administrative hearing is held at the Board of Nursing and includes a panel of Board members, the Hearing Officer (Judge), the licensee and, if engaged the licensee's attorney, and KBN staff
- An appeal can advance through the State court system

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The Case, May 2021

- Board staff received a complaint from an emergency room physician concerned that the licensee was "doctor shopping" for narcotics. A copy of her Prescription Drug Monitoring Report was included with the complaint
- Board staff opened a complaint. Staff reviewed the APRN's KASPER prescriber report and found no issues

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June 2021

- Board staff received a second complaint from the same licensee's part-time employer stating there were questions about her controlled substance prescribing (early fills). She also billed for a visit that did not occur

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July 2021

- Staff reviewed the APRN's personal KASPER, INSPECT reports, and found eight different providers and five different pharmacies listed. Staff mailed an order for a substance use disorder evaluation and a copy of both complaints to the licensee's address on file

(Licensees are required to file current and correct mailing and email addresses with the Board that they check frequently)

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August 2021

- The Board Investigator received a call from a local attorney reporting he would be representing the APRN. He planned to drop both his letter of representation and letter of response directly to the Board office. He never did
- In addition, the evaluation results reported the APRN did not meet criteria for a diagnosis of substance use disorder, but recommended discontinuation of her benzodiazepines, therapy for anxiety, for her to explore other therapeutic options, and to use opioids sparingly for her diagnosis of polycystic ovary syndrome (PCOS)
- Several emails sent to APRN requesting letter of response and letters from prescribers detailing diagnoses attached to the CS prescriptions

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October 2021

- After continued non-response, Legal Services issued a Notice of Charges and Notice of Intent to Request a Hearing
- APRN emails to report she has contacted an attorney for requested documents

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January 2022

- Staff receive a letter of response directly from the APRN, who reports that she now does not have an attorney
- She reports in her letter of explanation that the physician reported her as a retaliation for her report about his care, and that the false billing resulted from her inattention while working when ill

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March 2022

- APRN and staff participated in an investigative meeting. APRN was asked to provide letters from her controlled prescribers listed on her PDMP report detailing the diagnoses for which the CS were related to
- APRN provided one letter from her PCP (who was listed as prescribing both benzodiazepines and opiates). Staff discovered this PCP was the APRN's best friend in nursing school, and she had a joint practice with the APRN. The PCP did not sign the letter

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April 2022

- Board staff presented this case to a panel of Board members. The report included prior encounters the APRN had had with the Board. In January 2021, the APRN entered into an Agreed Order (Reprimand) for working without a license (both her RN and APRN licenses lapsed in October 2019) plus never enrolling in a KASPER/KOG master account
- Compliance suspended her licenses in November 2021 because she failed to meet the terms of her order. She eventually paid a civil penalty of \$1500 and completed 30 contact hours on the Legal Issues in Advanced Practice Nurse Prescribing and KASPER. Her licenses were reinstated in December 2021

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November 2022

- APRN entered into another Agreed Order with the Board. She must pay a civil penalty of \$2000 within a year, and complete 45 credit hours (15 CEs on Telehealth, 15 CEs on the use of KASPER and 15 CEs on Ethics in the Nursing and the Professional Role)

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How could this APRN have avoided these cases?

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APRN Portal

- KBN now has the APRN Portal available for licensees to manage their documents, update certifications, add or rescind notifications of CAPA agreements
- Available 24/7 this portal should be used to ensure all information is correct and up to date
- If a document is rejected, an email will be sent to the address on file

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Address/Email

- Make sure your mailing address is correct and current
- Make sure the email you have filed is also correct, current, and one you check frequently
- It is not a good idea to use your work email – KBN messages often end up going to the Junk folder and are missed
- It is, by law, the licensee's responsibility to have current contact information on file – please think "that is strange" if you have never received an email from the Board

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KASPER

- Use the KASPER report as a license-protecting tool
- Every provider with an active Kentucky DEA registration must enroll in KASPER/KOG, regardless of their prescribing history
- The prescriber KASPER must be reviewed for errors or fraud at least every six months
- Be aware of KASPER “red flags”: multiple prescribers, multiple pharmacies, early fills, high MME, overlapping CS

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KBN Communication

- Make sure you are receiving all communications from the KBN – The Connection eNewsletter, updates about renewal, etc.
- Most disciplinary notices have deadlines listed – pay attention and do not miss a deadline
- Follow KBN on Facebook

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Resources

- Sign up for Nursys e-Notify –
- **Nurses:** Sign up to receive license expiration reminders and status updates via email or SMS for all your licenses from e-Notify participating boards of nursing.
<https://www.nursys.com/EN/ENDefault.aspx>
- Use the experience and knowledge of the members of your professional organization KANPNM

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The Kentucky Alternative Recovery Effort (KARE) for Nurses Program

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Nurse Investigator/Case Manager
Compliance Branch

Disclosure

- ▶ I have no conflicts of interest to disclose in relation to this program/presentation.

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KARE for Nurses Program

- ▶ Was developed and is offered by the Kentucky Board of Nursing for Nurses suffering from Substance Use Disorders (SUD).
- ▶ The first step to be eligible for the KARE program is for the nurse to admit there is a problem/concern regarding alcohol or drug use.

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Substance Use Disorder (SUD) encompasses a pattern of behaviors that range from misuse to dependence or addiction, whether it is alcohol, legal or illegal drugs.

—National Council State Boards of Nursing (NCSBN)



Many nurses with SUD are unidentified, unreported, untreated and may continue to practice where their impairment may endanger the lives of their patients.

—National Council State Boards of Nursing (NCSBN)

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Intervention and Assistance

- ▶ Professional and ethical responsibility to report suspected alcohol or drug use to your nurse manager, supervisor and to the Kentucky Board of Nursing.
- ▶ Kentucky is a mandatory reporting state in accordance with KRS 314.031(4) (Unlawful acts related to Nursing) and KRS 314.091(1).
- ▶ Encourage nurse to self-report.
- ▶ Encourage nurse to contact KARE for Nurses Program at time of meeting.

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Kentucky Alternative Recovery Effort (KARE) for Nurses Program

...Identify and assist nurses whose abilities to practice nursing are compromised by a Substance Use Disorder (SUD) with alcohol or other drugs so that they may return to competent and safe nursing practice.

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KARE (Cont)

- ▶ Foundation of the KARE program is that Substance Use Disorder (SUD) is treatable and that the recovery and return of competent nursing practice is in the best interest of the Nurse and Public Health.
- ▶ Nurse may access the program by self-referral, Board referral, another person or agency such as employer, co-worker, friend or family member.

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Regulation for KARE

- ▶ Kentucky Administrative Regulations (KAR), Title 201, Chapter 20
- 201 KAR 20:450—Alternative Program (Alternative to Discipline Program for Nurses)

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KARE for Nurses Program

- ▶ Nurses/Applicants with SUD
- ▶ Voluntary program
- ▶ Alternative to disciplinary action
- ▶ Limited confidentiality
- ▶ Monitor nursing practice for length of Program (5 years)

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Admission Requirements...

- ▶ Current LPN, RN, APRN license in KY or have applied for licensure in KY;
- ▶ Request participation in KARE for Nurses Program in writing;
- ▶ Submit to a SUD Evaluation;
- ▶ Admit in writing to abusing, or being dependent upon, alcohol and/or drugs;
- ▶ Agree not to practice until approved to do so by KARE for Nurses Program staff/Case Manager

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Monitoring Requirements...

- ▶ Legal contract
- ▶ Practice limitations
- ▶ Submit to random drug/alcohol testing
- ▶ Individual/group counseling
- ▶ 12 step group attendance
- ▶ Sponsor contact



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Participant's Responsibility...

Must provide copy of KARE for Nurses Program Agreement to:

- Immediate Nursing Supervisor/Manager
- Healthcare Provider/Treating Practitioners
- Probation Officer
- Counselor/Therapist
- School of Nursing

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Relapse

- ▶ Positive drug screen/self-report (within 5 days)
- ▶ Cease Practice
- ▶ SUD evaluation
- ▶ Treatment

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3 ways to exit:

1. Successful completion
2. Voluntary surrender (Agreed Order)
3. Suspension due to noncompliance (Notice of Intent to Suspend issued)



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There is HOPE

"I'm so thankful for the existence of and the opportunity to participate in the KARE program. It has literally changed my life and enabled me to save my career and family."

"I won the distinct award of National Team Member of the Year!!! I'm overjoyed and so full of pride and validation."

"You have no idea how grateful I am. You saw me in my worst and hardest moments, you pushed me, you were tough on me, and somehow there was a belief in me...Thank you. Thank you. Thank you. From every ounce of my soul."

"The KARE program has saved my life and my career".

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If You Are Concerned....

- ▶ Notify supervisor/follow facility policies and procedures
- ▶ Express concern and support for healthcare worker getting help
- ▶ Learn more about the disease and its effects
- ▶ Encourage nurse/applicant to contact KARE for Nurses Program at: <http://kbn.ky.gov/KARE/> or call: 502-429-3313

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