BOARDS AND COMMISSIONS

Kentucky Board of Veterinary Examiners

(Amended After Comments)

201 KAR 16:701 Standards for medical records.

RELATES TO: KRS 257.080, 258.043, 258.065, 321.175, 321.181, 321.185, 321.187, 321.188, 321.200

STATUTORY AUTHORITY: KRS 321.175, 321.187, 321.235(2)(b)3.c.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175 states the purpose of the Kentucky Veterinary Medicine Practice Act is to promote, preserve, and protect **[~~the~~]** public health, safety, and welfare. KRS 321.235 allows the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to establish standards in medical records. This administrative regulation establishes standards for medical records created for animal patients by board credential holders.

Section 1. **Definitions.**

(1) "Clinical encounter" means an interaction between a patient, client, and a healthcare provider for the purpose of providing healthcare services or assessing the health status of a patient; it is the point at which decisions about diagnosis and treatment are made, and during which caring takes place.

(2) "Complete medical record" means the record contains sufficient information to:

(a) Identify the patient and the client;

(b) Support the diagnosis or condition;

(c) Justify the care, treatment, and services;

(d) Provide options for spectrum of care, where appropriate;

(e) Document the course and results of care, treatment, and services; and

(f) Promote continuity of care among providers.

A medical record shall be completed no more than forty-right (48) hours following the clinical encounter.

Section 2. Veterinary medical records shall be:

(1) Safeguarded against loss, tampering, or use by unauthorized persons;

(2) Be readily available to the veterinarian, other veterinarians at the same practice, employees of the veterinarian, and other authorized persons; and

(3) Contain sufficient information to permit any veterinarian to proceed with the care and treatment of the patient by reading the medical record.

Section 3 [~~**Section 2**~~]. Maintenance of Records.

(1) The practice where the records were prepared shall be the official records custodian.

(2) Original patient records shall be retained by the practice, veterinarian, or **allied animal health professional (AAHP)** [~~**AAHP**~~] who prepared them and be readily retrievable for a period of five (5) years following the last patient encounter. **Cessation from practice, either temporarily or permanently, does not relieve the practitioner from compliance with this section.**

(3) [~~**(a) Records shall not be stored by a third party without a record of signed, informed consent by the client.**~~

~~**(b)**~~] Records stored by a third party shall not relieve the veterinarian or AAHP from the responsibility of supplying records to the client upon request.

(4) (a) The veterinarian or AAHP permittee may require that a request for medical records be in writing and may charge a reasonable fee for copying or the staff time in preparing the requested medical records.

(b) In the event of a board investigation, no charges shall be authorized.

(c) Copies of the medical records shall be provided to the client, designated veterinarian, AAHP permittee, or authorized representative within seven (7) calendar days after receipt of a proper request or sooner in accordance with the patient's medical condition.

(d) Failure to provide the medical records in a timely fashion upon proper request shall be considered unprofessional conduct.

(5) Pursuant to KRS 321.187(2), records shall be retained and accessible to the client for five (5) years past the date of the last clinical encounter with the patient.

Section 4 **[~~Section 3~~]**. Veterinary medical records shall include the following information at a minimum:

(1) Patient or herd identification;

(2) Client identification;

(3) A record of every **clinical** encounter and consultation regarding the patient;

(4) Written or digital records and notes of each **clinical** encounter, including:

(a) Diagnosis **or differential diagnosis**;

(b) Treatments recommended, including spectrum of care options;

(c) Treatment plan agreed upon with client;

(d) If a prescription is issued, prescription details consistent with the requirements of 201 KAR 16:600;

(e) Recommendations;

(f) If a medical determination is made via telemedicine, a written statement about the digital information used to make the decision;

(g) If surgery is performed, details of surgery, including:

1. Amounts and duration of any drugs, sedatives, or other substances administered;

2. Documentation of appropriate, species-specific anesthetic monitoring, which may include temperature, pulse, and respiration; and

3. Documentation of recovery;

4. Materials used[~~ and the amounts so used~~], including at a minimum:

a. Suture materials;

b. Mesh materials; and

c. Other materials used; and

(h) Any other pertinent details.

(5) **Laboratory** [~~Radiographs, sonographic images, video recordings, photographs, or other imaging and laboratory~~] reports;

(6) Any information received as the result of a consultation, including the date, name, and contact information of the consultant;

(7) **A reference notation of the existence of radiographs, sonographic images, video recordings, photographs, or other diagnostic imaging, with ready access to or copies of those images available;**

(8) Any authorizations, details of conversations, releases, waivers, patient discharge instructions, records of informed consent, or other related documents;

(9)[~~(8)~~] The first and last name of the veterinarian, licensed veterinary technician, or veterinary assistant, or **AAHP** [~~allied animal health professional (AAHP)~~] permit holder

practicing on the patient during the visit, whether in-person or via telehealth**, or an identifying code that corresponds to the first and last name of the practitioner or person making the entry pursuant to subsection (12)**; [~~and~~]

(10)[~~(9)~~] The first and last name of the person making each entry in the medical record**, or an identifying code for each person pursuant to subsection (12);**

(11) The name of the veterinary facility or premises where the clinical encounter took place; and

(12) When an identifying code is used to denote the first and last name of the person making an entry into the medical record, a list of identifying codes and corresponding first and last names shall be made readily available with the medical records to the client or the board upon request.

Section 5 [~~**Section 4**~~].

(1) A person shall not:

(a) Intentionally create a false record;

(b) Make a false statement; or

(c) Alter or modify any medical record, document, or report concerning treatment of a patient.

(2) When correcting a **completed** medical record **for a clinical encounter**, the original content shall be readable, and the alteration shall be clearly identified with the:

(a) Correction,

(b) Reason for the correction,

(c) Date of correction, and

(d) First and last name of the person making the correction**, or an identifying code pursuant to Section 4(12)**.

Section 6 [~~**Section 5**~~]. **Rabies clinics.**

(1) During each rabies clinic held pursuant to KRS 258.043, copies of medical records shall be retained for each patient **clinical** encounter **beyond the rabies vaccination**.

(2) For rabies vaccinations only, a copy of the rabies certificate satisfies the requirement of this section.

Section 7 [~~**Section 6**~~]. (1) Pursuant to KRS 321.187, an animal patient's medical record and medical condition is confidential and may not be furnished to or discussed with any person other than the client or other veterinarians, veterinary technicians, veterinary assistants, veterinary practice staff **(including veterinary students, veterinary technician students, and special permittees)**, AAHP permittees, or consultants involved in the care or treatment of the patient, except upon written authorization of the client or under the following circumstances:

(a) In response to a court order, or subpoena with notice given to the client or the client's legal representative;

(b) For statistical and scientific research, if the information is abstracted in a way as to protect the identity of the patient and the client;

(c) As part of an inspection or investigation conducted by the board or an agent of the board;

(d) To verify the rabies vaccination status of an animal to law enforcement or local health department officials;

(e) In the course of a consultation as defined in KRS 321.181(24) or provided for in KRS 321.200(1)(f);

(f) In cases of animal abuse, pursuant to KRS 321.188;

(g) Pursuant to KRS 321.185(4)(b)3., in cases of reportable diseases as they relate to public or animal health pursuant to KRS 257.080 and 258.065 and the administrative regulations promulgated under the authority of those chapters;

(h) Access to the records is specifically required by other state or federal law; and

(i) Upon request by the board.

(2) (a) For purposes of written authorization from the client, nothing in this section shall require a veterinarian whose records are being authorized to be released to the client only to provide medical records, reports, and opinions to a client that may be used by a third party who does not have a veterinarian-client-patient relationship with the veterinarian for the purpose of, or in consideration of, the buying or selling of the animal.

(b) A veterinarian taking radiographs **of a patient**[~~**for an animal**~~] shall only be liable to the **client**[~~**owner of the animal**~~] for the content of the record, and not liable to third parties for the purpose of buying or selling of the animal.

p.p Michelle M. Shane, Executive Director
on behalf of John C. Park, DVM, Board Chair
Kentucky Board of Veterinary Examiners

11/13/2023
Date

201 KAR 16:701

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane, Executive Director
Phone: 502-782-0273
Email: Michelle.Shane@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes standards regarding the contents of medical records for animal patients.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the standard protocols and procedures for credential holders of the board to create, maintain, and share medical records.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 321.235, 321.351, 321.360, 321.990 specifically direct the board enforce the provisions of KRS Chapter 321 and impose penalties, where appropriate. KRS 321.235 authorizes the board promulgate administrative regulations to carry out the provisions of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation shall assist in effective administration by clearly detailing the expectations for the contents of a patient's medical records.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation:

This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes:

This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes:

This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

2,690 veterinarians, 590 licensed veterinary technicians, 50 animal control agencies, and 232 animal euthanasia specialists, an unknown number of allied animal health professionals (AAHP), and future applicants.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

All persons identified in question (3) are required to keep and maintain animal patient medical records for a period of five (5) years. This new administrative regulation establishes the requirements for the contents of the records, ensuring transparency of board expectations and standardizing medical records in order to assist in patient care and welfare. Identified persons will need to ensure they capture all necessary information in the records.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There shall be no additional costs imposed as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Administrative ease of clear communications of the approved requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the regulation establishes standards for medical records created and maintained by credential holders of the board.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No fees are established or increased by this administrative regulation.

(9) TIERING: Is tiering applied? (Explain why or why not)

No. All regulated entities have the same requirements.

201 KAR 16:701

FISCAL NOTE

Contact Person: Michelle Shane, Executive Director
Phone: 502-782-0273
Email: Michelle.Shane@ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Kentucky Board of Veterinary Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 321.175, 321.235(2)(b)3.c., 321.187

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue will be generated from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue will be generated from this filing.

(c) How much will it cost to administer this program for the first year?

This is not a new program. There will not be any costs to administration because the medical records are created and maintained by the credential holder, not the board.

(d) How much will it cost to administer this program for subsequent years?

Costs may decrease as both practitioners and clients understand the expectations for medical records; the board hopes to see a reduction in grievance cases.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

There will be no cost savings.

(c) How much will it cost the regulated entities for the first year?

There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years?

There will be no additional costs involved.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): None.

Expenditures (+/-): None or negligible.

Other Explanation: n/a

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars ($500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

This amendment shall not have a "major economic impact", as defined in KRS 13A.010(13).

STATEMENT OF CONSIDERATION
Relating to 201 KAR 16:701

Kentucky Board of Veterinary Examiners
(Amended After Comments)

I. The public hearing on 201 KAR 16:550, 201 KAR 16:552, 201 KAR 16:560, 201 KAR 16:701, 201 KAR 16:702, and 201 KAR 16:750 scheduled for September 25, 2023, at 1:00 p.m. at the Office of the State Veterinarian, 107 Corporate Drive, Frankfort, KY 40601, was held, and written comments were received during the public comment period.

II. The following people either attended the hearing, submitted written comments, or both:

Name and Title	Agency / Organization / Entity / Other
O. Wayne Bailey, DVM	Countryside Animal Hospital (Mt. Sterling, KY)
James Beckman, DVM	Gas Light Equine (Westport, KY)
Abbey E. Biddle, DVM	Commonwealth Veterinary Clinic (Georgetown, KY)
William E. Bollinger, DVM	Central Kentucky Veterinary Center (Georgetown, KY)
Ashley Book, Director	Louisville Metro Animal Services (Louisville, KY)
Emily P. Bridge, DVM	Commonwealth Veterinary Clinic (Georgetown, KY)
Mark Brengelman, Attorney and Legal Counsel for the Board	Kentucky Board of Veterinary Examiners (KBVE) (Frankfort, KY)
Amanda C. Briggs	KBVE Board Staff (Frankfort, KY)
Jason A. Burcham, DVM	Tri Point Veterinary Clinic (Hebron, KY)
Irene Carter-Ballard, DVM	Town & Country Veterinary Services (Lebanon, KY)
Johanna Choate, DVM	Choate Veterinary Services (Almo, KY)
Darrell L. Coffey, DVM	Russell County Animal Clinic (Russell Springs, KY)
Janet D. Donlin, DVM, on behalf of AVMA	American Veterinary Medical Association (AVMA) (national)
Catherine Donworth, MVE	Donworth Veterinary (Lexington, KY)
LaNita S. Flanary, DVM	Flanary Veterinary Clinic (Paducah, KY)
Tim R. Gardner, DVM	KBVE Board Member (Scottsville, KY)
Brandy Glaza, Hospital Manager	Licking Valley Veterinary Services (Butler, KY)
Nathan Glaza, DVM	Licking Valley Veterinary Services (Butler, KY)
Linda K. Grimes, DVM	Animal Clinic of Estill County (Irvine, KY), and Animal Control Advisory Board (ACAB) (statewide)
Debra Hamelback, Executive Director on behalf of Members of the KVMA Board	Kentucky Veterinary Medical Association (KVMA) (statewide)

Robert B. "Chip" Harkins, LVT, and on behalf of KVTA	Crescent Hill Animal Hospital (Louisville, KY) and Kentucky Veterinary Technician Association (KVTA) (statewide)
Robert E. Holland, Jr., DVM, PhD.	Robert E Holland Jr DVM PSC (Lexington, KY)
John A. Keith, DVM, MBA, MEcon	Crossroads Veterinary Clinic, LLC (Versailles, KY)
Amy Kerley, DVM	Progressive Animal Healthcare (Paducah, KY)
W. Wade King, DVM	Frankfort Animal Clinic (Frankfort, KY)
Barb Lewis, MA, LVT, VTS (Clinical Pathology)	Morehead State University (Morehead, KY)
Mike McNutt, AES, and on behalf of KACCA	Hardin County Animal Control (Elizabethtown, KY), and Kentucky Animal Care and Control Association (KACCA) (statewide)
Barbie M. Papajeski, MS, LVT, RLATG, VTS (Clinical Pathology)	Hutson School of Agriculture (Murray, KY)
John C. Park, DVM	KBVE Chairman (Lexington, KY)
Denia M. Pelphrey, DVM	Corydon Animal Hospital, Inc. (Corydon, IN)
Stephanie W. Raispis, DVM	Wilderness Trace Vet Clinic (Junction City, KY)
Andre Regard, Attorney	Regard Law Group (Lexington, KY)
R. Thomas Riney, DVM	Nicholasville Road Animal Hospital (Lexington, KY)
Jason L. Rodgers, DVM	Lone Oak Animal Clinic (Paducah, KY)
Phillip E. Russo, CAE on behalf of NAVTA	National Association of Veterinary Technicians in America (NAVTA) (national)
Michelle Shane, Executive Director	KBVE Board Staff (Frankfort, KY)
Debra K. Shoulders, DVM	House Calls for Paws & Claws (Bowling Green, KY)
Tammy T. Smith, DVM	Knox County Veterinary Services (Barbourville, KY)
Scott A. Steele, MS, LVT, VTS (Dentistry), and on behalf of KVTA and NAVTA	Clays Mill Veterinary Clinic (Lexington, KY), and Kentucky Veterinary Technician Association (KVTA) (statewide), and National Association of Veterinary Technicians in America (NAVTA) (national)
Aaron H. Stamper, DVM	Pet WOW (Highland Heights, KY)
Rachael Stephenson, LVT	Progressive Animal Healthcare (Paducah, KY)
Angalyn D. Theno, DVM	Bluegrass Animal Care Center (Radcliff, KY)
Jon M. Todd, DVM	Logan County Animal Clinic (Russellville, KY)
Scott S. Tritsch, DVM	Central Kentucky Veterinary Center (Georgetown, KY)
R. Steven Velasco, III, DVM	Kentucky State Veterinarian (statewide), and KBVE Board Member as proxy for the KDA Commissioner of Agriculture (Versailles, KY)
James M. Weber, Jr., DVM	Retired (Alexandria, KY)
Laura E. Williams, DVM	Luna Veterinary Services (Mayfield, KY)
Steven J. Wills, DVM	KBVE Board Member (Owensboro, KY)
Mary A. Zink, DVM	Phoenix Animal Care (Bedford, KY)

III. The following people from the promulgating administrative body responded to the written comments:

Name and Title
John C. Park, DVM, Chairman of the Board
Gene Smith, DVM, Vice Chair of the Board
Dianne J. Dawes-Torres, DVM, Board Member
Thomas M. Dorman, Citizen-at-Large, Board Member
Dale R. Eckert, DVM, Board Member
Tim R. Gardner, DVM, Board Member
Stephanie M. Kennedy, DVM, Board Member
Amy J. Staton, EdD, LVT, Board Member
Steven J. Wills, DVM, Board Member
Michelle M. Shane, Executive Director
Mark R. Brengelman, Attorney and Legal Counsel for the Board

IV. Summary of Comments and Responses

(1) Subject Matter: Medical records requirements

(a) Comment: KBVE, Dr. Beckman, Dr. Glaza, Dr. Kerley, Dr. Smith, Dr. Weber – The commentors applauded the KBVE for working to establish medical records standards. One commentor notes particular difficulty when receiving illegible records from other practitioners. One commentor noted that, with all the effort everyone has contributed to write good regulations, they hope the board enforces the new provisions across the commonwealth.

(b) Response: Numerous grievance cases in recent years have provided evidence of a lack of understanding by many practitioners about what should constitute an adequate medical record. The Kentucky Board of Veterinary Examiners (KBVE) has also heard from many licensees at regional meetings about the need for basic records standards in the law. For these reasons, KBVE is promulgating an administrative regulation which lists the basic requirements for medical records and their contents so the expectations are transparent and accessible to all credential holders and the public. There were no changes made to the filed administrative regulation in response to this comment.

(2) Subject Matter: Failure of other veterinary facilities in Kentucky to provide enough detail in the medical record to be helpful to the next veterinarian that receives the record.

(a) Comment: Dr. Kerely, Dr. Theno – The commentors stated that medical records received from other veterinary facilities in Kentucky are often inadequate, sometimes more like an invoice listing services without medical reasoning behind them or providing indication of treatments without specifying the details of the treatment and the medical reason behind them. An example was provided that a medical record stated "steroid injection" but failed to indicate what type of steroid was provided, the steroid dose, routes of administration, the medical reason for this treatment, etc.

(b) Response: When reviewing medical records related to grievances received by the Board, KBVE has learned that there are a number of inadequate medical records procedures in place in veterinary facilities across the commonwealth. In 2023, HB 167 passed and modernized the Kentucky Veterinary Medicine Practice Act, including new basic requirements for medical records. Pursuant to KRS 321.187(5), this proposed administrative regulation seeks to add necessary detail so the standards for what should be included in the medical records are clear to all practitioners. The requirements contained in the proposed administrative regulation shall become a part of the medical record, and it is a copy of the medical record (not just invoices) that shall be required upon request by the client or the Board. Failure to include the detail in the new administrative regulation on medical records shall be considered a violation of the Kentucky Veterinary Medicine Practice Act. Anyone may report a suspected violation of the Practice Act to the KBVE using the Grievance Form available on the KBVE website at https://kybve.com/grievances.html. This will trigger a review by the KBVE Grievance Committee, and appropriate action by the Board to remedy any discovered deficiencies. In response to this comment, KBVE declined to make any changes to the proposed administrative regulation.

(3) Subject Matter: Use of the word "client" throughout regulation.

(a) Comment: Dr. Glaza, Ms. Glaza – The commentor felt that the use of the word "client" is unrealistic, because sometimes veterinary facilities have to deal with a client's representative or their family, etc. They do not want the Board to penalize them for not speaking directly with the client. Another commentor stated that the client will sometimes send a representative with their animal instead of appearing themselves.

(b) Response: KRS 321.181(21) defines "client" to mean "the owner, owner's agent, or other person presenting the patient for care, who has entered into an agreement with a veterinarian or allied animal health professional on behalf of a patient for the purposes of obtaining veterinary medical services or allied animal health professional services in person or by any means of communication or telehealth;" Per LRC rules, this definition cannot be repeated in the administrative regulation. Because the word "client" is used in nearly all of KBVE's administrative regulations, it did not seem prudent to define this term repeatedly by referencing KRS 321.181(21) in each individual administrative regulation. KRS 312.181 should be referenced when reading the Kentucky Veterinary Medicine Practice Act and its associated administrative regulations, 201 KAR Chapter 16. In response to this comment, KBVE declined to make changes to the proposed administrative regulation.

(4) Subject Matter: Section 2(2) – use of the acronym "AAHP".

(a) Comment: AVMA – The commentor is concerned that this instance of "AAHP" is the first use in this regulation and the acronym has not yet been defined. They note it is instead defined later in the regulation.

(b) Response: KRS 321.181(1) defines "AAHP" to mean an "allied animal health professional". Because this term is defined in statute it is unnecessary to define the acronym. However, in response to this comment, for clarity KBVE has added the acronym's meaning at first use in the proposed administrative regulation.

(5) Subject Matter: Section 2(2) - Maintenance and retention of medical records.

(a) Comment: Dr. Bailey – The commentor reviewed proposed edits to the filed administrative regulations, specifically an addition to Section 2(2) that stated, "Cessation from practice, either temporarily or permanently, does not relieve the practitioner from compliance with this section." The commentor stated that there should be a time limit provided on the requirements for records retention following cessation from practice.

(b) Response: KRS 321.187(2) states that medical records shall be readily retrievable for a period of five (5) years following the last patient encounter. Cessation from practice shall not reduce the time requirement for record retention. In response to this comment, for clarity KBVE restated this provision in the proposed administrative regulation.

(6) Subject Matter: Section 2(3)(a) – Records shall not be stored by a third party without a record of signed, informed consent by the client.

(a) Comment: KVMA, Dr. Bailey, Dr. Choate, Dr. Flanary, Dr. Glaza, Dr. Riney, Dr. Williams – Commentors use or indicate that others use third-party cloud software to manage patient records and are concerned that this new provision will be unduly burdensome on practitioners if "third party" applies to e-storage and cloud providers.

(b) Response: The intent of the board in this provision was to prevent third-party companies from requiring payment for access to records from clients. Following a review of this comment, KBVE acknowledges the unintended consequences of the provision as written and determined to remove this provision from the administrative regulation.

(7) Subject Matter: Section 3 – Required contents of medical records.

(a) Comment: Dr. Bailey, Dr. Kerley, Dr. Zink – The commentors stated that the proposed administrative regulation requires too many details in general. One commentor stated that the Board should focus on requiring legible records that reflect the basic "S.O.A.P." requirements, (i.e., Subjective, Objective, Assessment, and Plan), and that should be enough detail. One commentor argued for the need to ensure that record keeping time is low, as well as the ability to use individual shorthand notations. They cited being a solo, rural practitioner and not having "the luxuries of multiple staff, state of the art equipment and upper class clientele" that would allow them time to make more detailed records. One commentor stated that staff do the majority of record keeping, because the veterinarian is often out of range of the computer. Further, they stated that the detailed items listed as required in the record will "act as traps" for mixed animal practitioners.

(b) Response: As the KBVE deals with grievance cases on a regular basis, the Board determined that more detail in the medical record is required to adequately understand a given medical situation. Medical records are for professional communications between practitioners and are essential to the health and well-being of every patient. Records should ensure a continuity of quality care and reflect a practice-specific common standard of care. Additionally, they protect the practitioner in cases of liability. Any veterinarian should be able to review a medical record and understand exactly what is going on with the animal and what treatments have been initiated. Additionally, it is imperative that records include information about

spectrum of care discussions, and that the record documents clients are provided options and a choice. In response to this comment, KBVE opted to reduce some level of detail required in the proposed administrative regulation but ultimately to require a higher level of detail than suggested by the commentors.

(8) Subject Matter: Section 3 – use of the word "practice" as it relates to the activities of an allied animal health professional.

(a) Comment: AVMA – The commentor stated, "Instead of 'practicing', should this be 'contributing to the care of the patient' or something similar? We can see 'practicing' covering the practice of veterinary medicine (veterinarian) or the practice of veterinary technology (veterinary technician), but does an allied health professional 'practice'?"

(b) Response: "Practice" of a profession is not exclusive to the practice of veterinary medicine or the practice of veterinary technology. An allied animal health professional (AAHP) practices their area of specialty on animal patients. Under the KBVE scope of authority, an AAHP practitioner is already certified to practice human chiropractic medicine and becomes certified by the KBVE to practice animal chiropractic. In response to this comment, KBVE did not make changes to the proposed administrative regulation.

(9) Subject Matter: Section 3(3), 3(4)(a), et al. – A record of "every encounter" and consultation regarding the patient – specifically, diagnosis.

(a) Comment: Dr. Bailey, Dr. Choate, Dr. Williams – The commentor is concerned that the Board is seeking to require a diagnosis at every patient encounter. They provide an example of a patient being brought in for a nail trim and ask what kind of diagnosis is expected in this type of situation. To provide an exam and diagnosis would increase the cost of a simple nail trim from $15 to more than $50. They would like to exclude non-medical encounters from the record keeping requirement. They would also like to do away with a requirement to provide a diagnosis at every patient encounter. One commentor noted that it would be impossible to record every conversation or client contact regarding a patient. They also noted that dogs sedated for grooming are released sedated without further monitoring.

(b) Response: KBVE did not intend to require diagnosis for non-medical encounters. However, KBVE disagrees that it is impossible to record each client contact regarding a patient's clinical status. Notes or a voice recording may be taken in the field and later entered into the medical record by the practitioner or their staff. In response to this comment, KBVE decided to amend the regulation to require every "clinical encounter" be required in the medical record, rather than "every encounter".

(10) Subject Matter: Subject Matter: Section 3(3), 3(4)(a), et al. – A record of "every clinical encounter" regarding the patient – from proposed revisions to filed regulations

(a) Comment: Dr. Beckman – The commentor reviewed the proposed revisions in response to comments received regarding the filed administrative regulations and asked that KBVE provide a definition of "clinical encounter" to assist practitioners in determining when a medical record is required.

(b) Response: In response to this comment, KBVE added a definition of "clinical encounter" to the proposed administrative regulation.

(11) Subject Matter: Section 3(4)(d) – If a prescription is issued, prescription details consistent with the requirements of 201 KAR 16:600.

(a) Comment: Dr. Riney – The commentor is concerned that if the prescription details are met in the medical record that this provision requires duplicative entry into the practitioner's medical notes.

(b) Response: 201 KAR 16:600 is related to prescription and dispensation of drugs. KBVE notes that the requirements in 201 KAR 16:600, Section 2(1) include the following information: the requirement of a current VCPR, and: "(a) The name and address of the veterinarian and, if the prescription is a written order, the signature of the veterinarian; (b) The name and address of the client; (c) The species and identity of the patient for which the prescription is issued; (d) The name, strength, and quantity of the drug prescribed; (e) The date on which the prescription is issued; (f) The directions for administering the drug; (g) If the patient is a food producing animal, the withdrawal time for the veterinary drug; (h) If the prescription authorizes extra-label use, the manner in which the client may use the drug; (i) Any cautionary statements required by law; and (j) Number of refills allowed, not to exceed the limitations established in Section 6(2) of this administrative regulation." The medical record itself should already contain most of this information, i.e., (a), (b), (c), (e).

The new administrative regulation for medical records is clarifying that the record entry for the encounter which generated the prescription should also reflect (d), (f), (g), (h), (i) and (j). As long as the information is recorded in the complete medical record for the patient encounter, it does not matter if the entry is in the general record or the practitioner's medical notes. In response to this comment, KBVE declined to make any changes to the proposed administrative regulation.

(12) Subject Matter: Section 3(9) – "The first and last name of the person making each entry in the medical record." Specifically, not enough room for whole name in software.

(a) Comment: Dr. Choate, Dr. Riney, Dr. Theno – The commentors stated that their medical records software only allows for the entry of a person's initials into the record and would like to know if the initials would suffice to meet this requirement. Some commentors just felt like this requirement was asking too much, and that only the name of the veterinarian was really necessary.

(b) Response: The KBVE processes public grievances and reviews medical records from across the commonwealth. Recently, both clients and the board have had a difficult time identifying who made the medical record and even which veterinarian provided services because the records either do not provide any indicator or marker denoting the service provider or only initials are provided. In addition, some non-licensee owners have attempted to block board investigations by refusing to supply the name of the veterinarians and staff who provided the services indicated in the record. In order to clearly communicate with both clients and the board and to address liability and responsibility issues, KBVE has determined that this requirement for identification is necessary. However, the Board concedes that some facility software may not

accommodate this type of entry. In response to this comment, KBVE determined to modify the provision in Section 3(9) to allow that veterinary facilities and AAHP facilities to use only initials in the entry so long as a list of initials and corresponding names can be provided to the client or to the Board upon request of the medical records.

(13) Subject Matter: Section 3(9) – "The first and last name of the person making each entry in the medical record." Specifically, this will make the medical record too long.

(a) Comment: Dr. Kerley – The commentor proposed that the requirement to identify the first and last name of every staff person involved in an encounter is unnecessary, would make the record unnecessarily long, and may endanger staff. The commentor suggests that only the names of the DVM and the primary licensed veterinary technician (LVT) are necessary to include in the medical record.

(b) Response: The KBVE processes public grievances and reviews medical records from across the commonwealth. KRS Chapter 321 mandates the KBVE to protect the public. The KBVE determined that understanding all parties involved in the medical care of the patient is a critically important aspect of record keeping and accountability; this falls within the public's interest so that they may identify who is providing medical services to their families and animals. As stated in subject matter (11) above, the KBVE amended the proposed administrative regulations to allow that initials may be used in the medical record; however, a key decoding those initials must be provided to either the client or the Board upon request with the medical records. Additionally, not all veterinary facilities employ LVTs; some facilities only employ veterinary assistants. The names (or initials) of any staff working on the medical aspects of a patient during a clinical encounter should be recorded in the record. In response to this comment, KBVE modified this section of the proposed administrative regulation to indicate that the section only applies to completed records of clinical encounters.

(14) Subject Matter: Section 3(4)(g)4. – Documentation of suture materials and the amounts so used.

(a) Comment: Dr. Theno – The Commentor is concerned that the level of detail being requested in the medical record is too much. Commentor agrees that documenting the suture material type or brand and what suture pattern was used is extremely important, but finds the need to count the number of suture packets is unreasonable.

(b) Response: In response to this comment, KBVE determined to remove the requirement "and the amounts so used" from the proposed administrative regulation.

(15) Subject Matter: Section 4(2) – "When correcting a medical record, the original content shall be readable, and the alteration shall be clearly identified with the: (a) Correction, (b) Reason for the correction, (c) Date of correction, and (d) First and last name of the person making the correction."

(a) Comment: Dr. Kerley – The commentor is concerned about the timeframe related to the requirements in this section. They provide an example of a staff person keeping a record open for the duration of a visit until patient discharge.

(b) Response: In this section, KBVE is referring to a completed record that is concluded following a patient visit. For records where a patient is retained overnight or multiple days, the record would be concluded at the end of each day, and modifications to the prior day would trigger the need to comply with the provisions of this section. In response to this comment, KBVE added clarifying language to the proposed administrative regulation.

(16) Subject Matter: Section 5 – medical records required for rabies clinics held under KRS 258.403.

(a) Comment: Dr. Zink – The commentor states that the requirement to make a complete medical record for animal patients seen at high volume rabies clinics would be counterproductive and cost prohibitive to vaccinating as many animals as possible. They state that at these clinics, members of the public are provided a copy of the rabies certificate and a rabies tag, and that many of these individuals are never seen again by the veterinarian.

(b) Response: Members of the Board discussed this comment and determined that retention of a copy of the rabies certificate would suffice for the medical record in rabies clinics. However, for any other medical services provided, including other vaccines, a medical record must be created. In response to this comment, KBVE added clarifying language to the proposed administrative regulation.

(17) Subject Matter: Section 6 – written authorization required for the release of medical records.

(a) Comment: Dr. Kerley – The commentor believes that the requirement for written authorization from the client is cumbersome and unnecessary. They propose that written authorization be changed to verbal authorization.

(b) Response: KRS 321.185, 321.187, and 321.188 proscribe specific instances in which written authorization is required to release medical records. In short, unless a client is requesting records for themselves, a written authorization is required. In response to this comment, KBVE declined to make any changes to the proposed administrative regulation.

(18) Subject Matter: Section 6 – discussion of case information at a veterinary facility and who may be allowed to know case details.

(a) Comment: KVMA, Dr. Smith, Dr. Weber, – The commentors stated concerns that this section precludes veterinarians from sharing the medical details and case information of patients with veterinary students. One commentor stated that they work with students from LMU and they must complete a capstone presentation for each rotation, which includes some patient medical records accessed during their preceptorship.

(b) Response: KRS 321.187(6) and the proposed 201 KAR 16:701, Section 6 both state "An animal patient's medical record and medical condition is confidential and may not be furnished to or discussed with any person other than the client or other veterinarians, veterinary technicians, veterinary assistants, veterinary practice staff, AAHP permittees, or consultants involved in the care or treatment of the patient…" In discussing this comment, Member of the Board determined that veterinarian students or veterinary technician students fall within the category of "veterinary practice staff". In response to this comment, KBVE changed the

proposed administrative regulation for clarity that veterinary students are part of the group that is allowed access to a patient's medical records without express client consent in order that veterinary students may improve their education and preparedness for entering the fields of veterinary medicine and become better practitioners.

(19) Subject Matter: Section 6(2)(b) – veterinarian liability related to medical records.

(a) Comment: Dr. Glaza – The Commentor feels that this provision handicaps veterinarians from disclosing pre-purchase medical records to potential buyers.

(b) Response: KBVE understands that radiographs and other parts of the medical record are used in the buying and selling of equines. KBVE also understands that non-veterinarian third parties sometimes use and interpret the medical records created for the client (where the client is either the buyer or seller). Non-veterinarians should not be interpreting an animal's medical record, as this is the practice of veterinary medicine. Additionally, a KBVE licensed veterinarian should not be held liable for the non-veterinarian party's interpretation of the record. IN response to this comment, KBVE changed the wording in this section of the proposed administrative regulation to reflect that liability rests with the client and not just the owner.

(20) Subject Matter: Medical records required for high volume spay/neuter operations or surgeries completed on shelter or rescue animals. Specifically, different standards should be required.

(a) Comment: Dr. Bailey, Dr. Bollinger – The commentors stated that there needs to be different medical record standards for shelter or rescue animals. They state that written records are not kept for surgical monitoring on these patients in their practice, and that patients are recorded by a shelter ID number rather than a name. They state that this helps keep costs low for animal shelter work.

(b) Response: Members of the KBVE have determined that there should not be separate, less stringent standards for patients in high volume spay/neuter operations, nor for surgeries done on shelter animal patients. These patients are not worth less or have less value than those owned by individual clients. KBVE does acknowledge and accept that there may be protocols in place at the veterinary facility in written format that can be referenced in the medical records, rather than copying the protocols into the record. It should also be noted that the standards in this proposed administrative regulation are minimum standards only, and that records have the option to contain much more detail for individual clients. In response to this comment, KBVE declined to make any changes to the proposed administrative regulation.

(21) Subject Matter: Too much regulation

(a) Comment: Dr. Zink – The commentor stated that they have been in practice for over 25 years and have built relationships with people in the community. They state, "My clients trust me. There is a need for a compassionate caring but affordable option for the people in my community. If all of these changes are implemented in the next 2 years, I will not be able to keep my practice open. This will be a loss not just for me and the practice that I have built, but also for my clients and their animal companions. I understand that the nature of these regulations are to

standardize the health care system but they seem exclusionary, burdensome, narrow and also excessive. Veterinarians are stressed enough."

(b) Response: KBVE determined that this conclusion is incorrect. Adequate medical records are an essential component of the standard of care for the benefit and welfare of the patient and client. Failure to do so is a failure of the standard of care. In response to this comment, KBVE declined to make changes to the proposed administrative regulation.

(22) Subject Matter: Opportunity to review proposed changes to the regulations prior to being finalized.

(a) Comment: KVMA, Ms. Hamelback, Dr. Weber – The commentors asked if there would be opportunity for stakeholders to review and provide additional feedback on any proposed changes to the draft prior to final filing with LRC. One commentor asked for a timeline on the final processes for these filed regulations.

(b) Response: Under KRS Chapter 13A, the answer is no. However, KBVE did work on the regulations during two board meetings prior to the public meeting and published the proposed changes to the filed regulations in an effort to allow stakeholder review prior to the final filings. KBVE is required to provide a Statement of Consideration (SOC) to LRC on each filed administrative regulation that received comments, including a response to all comments received and detailed description of the changes made. Once the final filing is made, the General Assembly Administrative Regulations Review Subcommittee (ARRS) shall have final review. For the current filed regulations, the SOCs were targeted for completion and filing with LRC by October 15; if that date was met, the ARRS would have heard these regulations in November. However, development of the SOCs took longer; the final filing shall occur by November 15 and the ARRS shall hear the regulations in December. After the hearing, Members of the ARRS shall have 90 days to further review the regulations. Unless deferred or found deficient, an ordinary regulation will go into effect on or before expiration of the 90-day review period. If and when these final filings become effective administrative regulations, the Board may take up the regulation again at any time and file an amendment under the process established in KRS Chapter 13A. Anyone can request that the Board take up the regulation for revision by making the request in writing to the Board's executive director or attending a board meeting and making such a request for review.

(23) Subject Matter: Failure to provide advance copies of these regulations prior to filing to KVMA, KVTA, and other stakeholders.

(a) Comment: Dr. Smith – The commentor stated that they represented the KVMA Southeast region. They relayed that many constituents from this area had volunteered to participate in working groups were not consulted for these regulations. They asked what happened. Several of their colleagues have expressed a feeling of betrayal and breach of trust.

(b) Response: KBVE notes that there appears to have been a miscommunication. KBVE did pledged to work with stakeholders in advance of filing on regulations for the new programs in the modernized Practice Act, specifically those for registered facilities, allied animal health professional permits, and the educational awards program. However, KBVE did not commit to working in advance of filing on all administrative regulations within 201 KAR Chapter 16. In

general, the opportunity to provide feedback on administrative regulations promulgated by a government agency is given in the public comment period under KRS Chapter 13A. KBVE is still committed to working with stakeholders in advance of filing in specific, limited areas, and drafts for review are already available on the KBVE website at https://www.kybve.com/practice-act.html. No comments on those drafts have been received to date. KBVE will be scheduling stakeholder meetings to discuss these drafts prior to filing with LRC. In response to this comment, KBVE declined to make changes to the proposed administrative regulation.

(24) Subject Matter: Notification procedures on the filing of the administrative regulations were inadequate.

(a) Comment: Dr. Todd – The commentor was upset that the KBVE did not send notification to the entire licensee population when these regulations were filed.

(b) Response: KBVE sent notification within one (1) business day to those entities required by law in KRS 13A.270, those on the RegWatch list, and to the Kentucky Veterinary Medical Association (KVMA). Subsequently, KVMA sent an email blast to its Membership. Additionally, the KBVE posted the filings on its website within 24 hours of filing. KBVE notified Dr. Todd how to sign-up for RegWatch notifications, but he had not done so by the time of this SOC filing. KBVE did not send out an email blast to all licensees about these filings because the board did not want to foster confusion amongst the licensee population about when requirements would become effective. Nonetheless, some commentors still interpreted the filings as new rules which they needed to follow immediately, rather than a filing that was still in the public comment phase and not yet effective. In response to this comment, KBVE declined to make changes to the proposed administrative regulation.

(25) Subject Matter: Transcripts of the hearing

(a) Comment: Dr. Beckman, Dr. Bollinger, Dr. Tritsch – Multiple commentors requested copies of a transcript of the hearing.

(b) Response: Pursuant to KRS 13A.270(11), any individual requesting a transcript has the responsibility to pay for the transcript. KBVE did not intend to bring in a court reporter to transcribe the meeting, but did plan to and follow through with capturing an audio recording of the meeting. Prior to the meeting, all parties were notified of this provision in statute and provided the option to arrange for and pay in advance for a court reporter and written transcript. However, all parties declined the written transcript option and instead agreed to accept the audio recording of the public hearing in lieu of a written transcript. Copies of the audio recording were provided to the requestor less than three (3) hours after the conclusion of the meeting. In response to this comment, KBVE declined to make changes to the proposed administrative regulation.

V. Summary of Statement of Consideration and
Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was held and written comments were received. The Kentucky Board of Veterinary Examiners responded to the comments and amends the administrative regulation as follows:

Page 1
Section 1
Line 14

After "Section 1.", insert the following:

"**Definitions.**

(1) "Clinical encounter" means an interaction between a patient, client, and a healthcare provider for the purpose of providing healthcare services or assessing the health status of a patient; it is the point at which decisions about diagnosis and treatment are made, and during which caring takes place.

(2) "Complete medical record" means the record contains sufficient information to:

(a) Identify the patient and the client;

(b) Support the diagnosis or condition;

(c) Justify the care, treatment, and services;

(d) Provide options for spectrum of care, where appropriate;

(e) Document the course and results of care, treatment, and services; and

(f) Promote continuity of care among providers.

A medical record shall be completed no more than forty-right (48) hours following the clinical encounter.

Section 2."

Page 1
Section 2
Line 20

At the beginning of the line, insert "**Section 3**"

Delete "Section 2"

Page 2
Section 2(2)
Line 1

After "veterinarian, or", insert "**allied animal health professional (AAHP)**"

Delete "AAHP"

Page 2
Section 2(2)
Line 3

After "encounter.", insert "**Cessation from practice, either temporarily or permanently, does not relieve the practitioner from compliance with this section.**"

Page 2
Section 2(3)
Line 4

Delete "(a) Records shall not be stored by a third party without a record of signed, informed consent by the client.
(b)".

Page 2
Section 2(4)(d)
Line 16

After "unprofessional conduct.", insert "**(5) Pursuant to KRS 321.187(2), records shall be retained and accessible to the client for five (5) years past the date of the last clinical encounter with the patient.**"

Page 2
Section 3
Line 17

At the beginning of the line, insert "**Section 4**"
Delete "Section 3"

Page 2
Section 3(3)
Line 21

After "every", insert "**clinical**"

Page 2
Section 3(4)
Line 22

After "each", insert "**clinical**"

Page 2
Section 3(4)(a)
Line 23

After "Diagnosis", insert "**or differential diagnosis**"

Page 3
Section 3(4)(g)4.
Line 13

Delete "and the amounts so used".

Page 3
Section 3(5)
Line 18-19

After "and laboratory", insert "**Laboratory**"

Delete "Radiographs, sonographic images, video recordings, photographs, or other imaging and laboratory".

Page 3
Section 3(7)
Line 22

After "(7)", insert the following:

"**A reference notation of the existence of radiographs, sonographic images, video recordings, photographs, or other diagnostic imaging, with ready access to or copies of those images available;**
(8)"

Page 4
Section 3(8)
Line 1

At the beginning of the line, insert "**(9)**"

Delete "(8)".

Page 4
Section 3(8)
Line 2

After "veterinary assistant, or", insert "**AAHP**"

Delete "allied animal health professional (AAHP)"

Page 4
Section 3(8)
Line 3

After "via telehealth", insert "**, or an identifying code that corresponds to the first and last name of the practitioner or person making the entry pursuant to subsection (12)**"

Delete "and".

Page 4
Section 3(9)
Line 4

At the start of the line, insert "**(10)**"

After "medical record", insert the following:

"**, or an identifying code for each person pursuant to subsection (12);**

(11) The name of the veterinary facility or premises where the clinical encounter took place; and
(12) When an identifying code is used to denote the first and last name of the person making an entry into the medical record, a list of identifying codes and corresponding first and last names shall be made readily available with the medical records to the client or the board upon request.
Section 5"
Delete "(9)".

Page 4
Section 4
Line 5
Delete "Section 4"

Page 4
Section 4(2)
Line 10
After "correcting a", insert "**completed**"
After "medical record", insert "**for a clinical encounter**"

Page 4
Section 4(2)(d)
Line 15
After "correction", insert the following:
"**, or an identifying code pursuant to Section 4(12).**
Section 6"

Page 4
Section 5
Line 16
Delete "Section 5"

Page 4
Section 5
Line 16
After "Section 5.", insert the following:
"**Rabies clinics.**
(1)"

Page 4
Section 5
Line 17
After "patient", insert "**clinical**".

After "encounter", insert the following:

"**beyond the rabies vaccination.**
(2) For rabies vaccinations only, a copy of the rabies certificate satisfies the requirement
of this section.
Section 7"

Page 4
Section 6
Line 18

Delete "Section 6"

Page 4
Section 6(1)
Line 21

After "veterinary practice staff", insert "**(including veterinary students, veterinary technician students, and special permittees)**"

Page 6
Section 6(2)(b)
Line 1

After "radiographs", insert "**of a patient**"
Delete "for an animal"

Page 6
Section 6(2)(b)
Line 1-2

After "liable to the", insert "**client**"
Delete "owner of the animal"