



June 24, 2024

Kentucky Board of Pharmacy  
125 Holmes Street, Suite 300  
Frankfort, KY 40601  
pharmacy.board@ky.gov

**RE: ATA ACTION CONCERNS WITH PROPOSED RULES 201 KAR 2:030, 201 KAR 2:050, and 201 KAR 2:465**

Dear Members of the Kentucky Board of Pharmacy,

I am writing on behalf of ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, to express concerns regarding proposed rules 201 KAR 2:030, 201 KAR 2:050, and 201 KAR 2:465. We believe these regulations will hinder patient access to essential medications, impose impractical burdens on non-resident pharmacists, and ultimately negatively affect healthcare outcomes for Kentucky patients.

ATA Action advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. ATA Action supports the enactment of state and federal telehealth coverage and fair payment policies to secure telehealth access for all Americans, including those in rural and underserved communities. ATA Action recognizes that telehealth and virtual care have the potential to truly transform the healthcare delivery system by improving patient outcomes, enhancing the safety and effectiveness of care, addressing health disparities, and reducing costs.

ATA Action's membership includes many telehealth providers who rely on mail-order pharmacy services to deliver high-quality treatment. Patients often choose to receive medical care in a telehealth setting for the same reasons they choose to receive medications via mail-order pharmacy; both care settings offer solutions for patients with limited mobility, transportation challenges, lack convenient or easy access to a pharmacy to fill their prescription or who are part of a vulnerable or stigmatized patient population. Mail-order pharmacy can be particularly impactful for patients seeking treatment for conditions that are often stigmatized, such as dermatological issues, substance abuse disorder, sexual health, depression, anxiety, and obesity. For these patients timely and discreet access to the medications our members provide is essential to ensuring they can comfortably and safely pursue the treatment they need.

We have significant concerns that certain provisions within proposed rules 201 KAR 2:030, 201 KAR 2:050, and 201 KAR 2:465 – specifically the new requirements for non-resident licensure and for pharmacists-in-charge – will have unintended consequences for Kentucky patients as if our members feel it is no longer operationally feasible to comply with these regulations and provide services to Kentucky patients, access to treatment will be reduced and patient health outcomes could be compromised.

**ATA ACTION**

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First, Rule 201 2:050 would impose new requirements for any non-resident pharmacist serving Kentucky patients, including a \$50 application fee, yearly renewal fees, fingerprint-supported criminal record checks, and the necessity to maintain a National Association of Boards of Pharmacy Verify credential. We are concerned this first-in-the nation mandate would place undue administrative burdens on non-resident pharmacists, making it more difficult for them to provide vital medications to Kentucky patients. It is unclear how Kentucky's current framework law, which allows non-resident pharmacists to practice in Kentucky if they hold an active license in good standing from another state, has been ineffective or poses risks to patients. Instead of introducing new licensing procedures, we recommend reinforcing the current processes to address any concerns about enforcement or additional guardrails that are less resource intensive or operationally burdensome. For example, implementing processes to ensure non-resident pharmacists' consent to jurisdiction can address the Board's concerns without adding unnecessary administrative burdens.

Second, the new requirements proposed in Rule 201 2:465 are onerous due to the requirement for the pharmacist-in-charge (PIC) to return patient calls within 48 hours. This requirement is excessively burdensome and may not be feasible for non-resident pharmacists who are managing their primary practice locations and providing services to patients across the country. Furthermore, the need for specifically the PIC to return the patient's call within 48 hours could be unrealistic as the PIC could be traveling, sick, or otherwise indisposed and unable to return a patient call within that time frame. Current statute also already requires that patients be able to access a pharmacist "with access to the patient's prescription records" a minimum of 40 hours and six days per week, not specifically a PIC.<sup>1</sup> There is no clinical reason why the PIC must be the one to return a patient's call if there are licensed staff pharmacists, who will have been trained in patient counseling, able to answer the patient's questions. Necessitating that the PIC be the one to return a patient call is also a poor use of staffing resources and could potentially delay patient care as even if the staff pharmacist who answers the patient's call cannot answer the question immediately, other staff pharmacists at the out-of-state pharmacy may be able to do so far quicker than 48 hours.

In order to ensure clarity and provide timely patient care, ATA Action encourages amendments to proposed Rule 201 2:465 that will remove the potentially unachievable 48 call back window and replace it with something that provides necessary flexibility such as *"If the staff pharmacist is unable to resolve the patient's question, the pharmacist-in-charge shall return the call of the patient as soon as realistically possible."* We also encourage further amendments to ensure that it is not the sole responsibility of the PIC to return the patient's call and that any licensed pharmacist is eligible to do so.

Finally, it is important to note that these requirements for PICs are not in place, nor are they proposed, for in-state pharmacies. If the Board truly believes that 48-hour responses from PICs are essential to patient care then this same requirement should be proposed for all pharmacies serving Kentucky patients, not just those located in other states. Placing additional and onerous

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<sup>1</sup> Kentucky Statute 315.0351, <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=53707>.



requirements on out-of-state pharmacists and pharmacies, when compared to their in-state counterparts, will only further serve to discourage out-of-state pharmacies from offering care to Kentucky patients, exacerbating the patient care concerns raised at the beginning of this letter.

In conclusion, ATA Action believes the above provisions of the proposed rules will reduce access to essential medications, impose impractical administrative and operational burdens on non-resident pharmacists, and adversely affect healthcare outcomes for Kentucky patients. We urge the Board to reconsider these regulations and work towards solutions that promote patient access, harmonize licensure, and reduce unnecessary regulatory burdens. Thank you for your time and attention to this matter.

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley".

Kyle Zebley  
Executive Director  
ATA Action