

201 KAR 6:090. Complaint process.

RELATES TO: KRS Chapter 13B, Chapter 216A

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(3) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.070(1)(e) requires the board to investigate a person engaging in a practice which violates the provisions of KRS Chapter 216A. This administrative regulation establishes procedures for the investigation of a complaint received by the board.

Section 1. Definitions. (1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (4) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 216A or 201 KAR Chapter 6.

(3) "Complaint" means:

(a) A written allegation alleging misconduct by a credentialed individual or other person which might constitute a violation of KRS Chapter 216A, 201 KAR Chapter 6, or another state or federal statute or administrative regulation;

(b) A notification which relates to the credential of the individual pursuant to KRS Chapter 216A; or

(c) A Notification of Substandard Care issued by the Cabinet for Health and Family Services, as defined in 42 C.F.R. 488.301.

(4) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal action.

(5) "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a dispensation of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

(7) "Standards of practice committee" means the committee appointed pursuant to Section 7 of this administrative regulation.

Section 2. Receipt of Complaints. (1) A complaint may be submitted by an individual, organization, or entity. A complaint shall be in writing and shall be signed by the person offering the complaint. The board may file a complaint or a formal complaint based on information in its possession.

(2)(a) Upon receipt of a complaint against a licensee, a copy of the complaint shall be sent to the licensee named in the complaint along with a request for that licensee's response to the complaint.

(b) The licensee shall file a response to the complaint within twenty (20) days from the date the letter was mailed as signified by the date on the letter.

(3) Upon receipt of a notification of substandard care, a copy of the notification shall be sent to the licensee administering the facility at issue along with a letter from the board requesting the following information:

(a) The effective date of that administrator becoming the administrator of record for the facility. If that has occurred within the last 180 days, the facility shall furnish the name of the pre-

vious administrator;

(b) A copy of completed and approved 2567L and notice of acceptance of allegation of compliance as issued by the Cabinet for Health and Family Services;

(c) A copy of notice of results of revisit as issued by the Cabinet for Health and Family Services; and

(d) A formal notice of each remedy imposed by the Cabinet for Health and Family Services, if applicable.

(4) A licensee shall provide the documentation listed in subsection (3) of this section if a request is made by the board pursuant to that provision.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the licensee's response, the standards of practice committee shall consider the complaint, the licensee's response, and other relevant material available and make a recommendation to the board regarding whether an investigation of the complaint is required.

(2) If, in the opinion of the board, a complaint does not warrant a formal investigation, the board shall dismiss the complaint.

(3)(a) If, in the opinion of the board, a complaint warrants a formal investigation against either a licensed individual or a person who may be practicing without appropriate credential, the board shall authorize an investigator to investigate the matter and make a report to the standards of practice committee.

(b) If, at any time, the board determines that it has enough information, it may file a formal complaint pursuant to Section 4 of this administrative regulation.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1)(a) Upon completion of the formal investigation, the investigator shall submit a report to the standards of practice committee of the facts regarding the complaint.

(b) The committee shall review the investigative report and make a recommendation to the board.

(c) The board shall determine whether there is enough evidence to believe that a violation of KRS Chapter 216A or 201 KAR Chapter 6 may have occurred and whether a complaint shall be filed.

(2) If, in the opinion of the board, a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, the complaint shall be dismissed or referred to another agency for action. The board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) If, in the opinion of the board, a complaint warrants the issuance of a formal complaint against a licensee, the standards of practice committee shall authorize a formal complaint which states the charge or charges to be considered at the hearing. The formal complaint shall be approved by the board and served upon the individual as required by KRS 13B.050.

(4) If, in the opinion of the board, probable cause exists that an individual is guilty of practicing without appropriate credential, it may:

(a) Issue a letter ordering that person to cease and desist from the unlicensed practice of long-term care administration;

(b) Forward information to the county attorney of the county of residence of the person allegedly practicing without appropriate credential with a request that appropriate action be taken under KRS 216A.150 and 216A.990; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of long-term care administration.

Section 5. Settlement by Informal Proceedings. The board may at any time enter into a settlement agreement or agreed order with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(1) An agreed order or settlement agreement shall only be effective after being approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(2) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice and Service Process. A notice required by KRS Chapter 216A or this administrative regulation shall be issued pursuant to KRS 13B.050.

Section 7. Standards of Practice Committee. The standards of practice committee shall:

(1) Be appointed by the chairman of the board; and

(2) Consist of two (2) or three (3) board members. (25 Ky.R. 686; Am. 1588; eff. 1-19-99; 40 Ky.R. 639; 1022; eff. 11-20-2013.)