

## **201 KAR 9:081. Disciplinary proceedings.**

RELATES TO: KRS 218A.205, 311.530-311.620, 311.840-311.862, 311.990

STATUTORY AUTHORITY: KRS 218A.205(3)(d), (e), (f), (5), (6), 311.565(1)(a), (i), 311.595, 311.597, 311.601, 311.842(1), 311.850

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) and (i) and KRS 311.842(1) authorize the board to promulgate administrative regulations to regulate the conduct of licensees and to promote the efficient and fair conduct of disciplinary proceedings. KRS 311.595 and 311.597 authorize disciplinary action against licensees for specified offenses. KRS 311.850 authorizes disciplinary action against physician assistant licensees. KRS 218A.205(3)(d), (e), and (f) require the board to promulgate an administrative regulation establishing procedures for disciplinary action against licensees who are authorized to prescribe controlled substances, including the enforcement of licensure standards to restrict the practice of a licensee or an applicant engaged in improper conduct. KRS 218A.205(6) authorizes the board to allow by administrative regulation an anonymous complaint or grievance. KRS 311.601 authorizes the board to adopt administrative regulations to effectuate and implement the provisions of KRS 311.550 to 311.620 in regard to physicians, and KRS 311.842(1) authorizes the board to adopt administrative regulations to license and regulate the practice of physician assistants in regard to KRS 311.840 to 311.862. This administrative regulation establishes the procedures to be followed in handling formal and informal disciplinary proceedings before the board, to conduct the proceedings with due regard for the rights and privileges of all affected parties.

### Section 1. Definitions.

(1) "Applicant" means a person who is applying for an initial license or applying to reregister an inactive license to practice medicine or osteopathy or to practice as a physician assistant in the Commonwealth of Kentucky.

(2) "Board" is defined by KRS 311.550(1).

(3) "Charge" is defined by KRS 311.550(14).

(4) "Complaint" is defined by KRS 311.550(15).

(5) "Executive director" is defined by KRS 311.550(4).

(6) "General Counsel" is defined by KRS 311.550(5).

(7) "Grievance" is defined by KRS 311.550(13).

(8) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.

(9) "License" means a license to practice medicine or osteopathy or to practice as a physician assistant.

(10) "Licensee" means a person licensed by the board to practice medicine or osteopathy or a person licensed by the board to practice as a physician assistant in the Commonwealth of Kentucky.

(11) "Relating to a controlled substance" means any conviction or plea to a criminal charge, regardless of adjudication or the title of the offense named in the plea or judgment of conviction, that is determined from all available facts to have been based upon or resulted from, in whole or part, an allegation of conduct involving the improper, inappropriate, or illegal use, possession, transfer, prescribing, or dispensing of a controlled substance.

(12) "Relating to prescribing or dispensing or administering a controlled substance" means any conviction or plea to a criminal charge, regardless of adjudication or the title of the offense named in the plea or judgment of conviction, that is determined from all available facts to have been based upon or resulted from, in whole or part, an allegation of conduct involving the

improper, inappropriate, or illegal prescribing, dispensing, or administering of a controlled substance.

(13) "Show cause order" means an order issued pursuant to KRS 311.572.

Section 2. Reception of Grievances; Investigations. (1)(a) A grievance may be submitted by any individual, organization, or entity.

(b)1. The board shall provide a copy of the Information on Filing a Grievance, the Consumer's Guide to the KBML, the Grievance Form, and the Waiver of Privilege, Agreement to Release Records to a party who wants to register a grievance against a licensee.

2. Each grievance shall be filed on the Grievance Form; and

- a. Include the name and address of the party filing the grievance; or
- b. Be filed anonymously, subject to paragraph (d) of this subsection.

(c) A board member or employee may initiate a grievance by providing a written memorandum to the executive director.

(d) If the board receives an anonymous grievance, an investigation shall be conducted if the grievance is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the grievance is meritorious.

(2)(a) The board shall initiate each investigation pertaining to prescribing or dispensing or administering of a controlled substance within seventy-two (72) hours of the date of receipt of the grievance.

(b) Except as provided by subsection (1)(d) of this section, each grievance shall be investigated as necessary and as promptly as possible, and presented to the inquiry panel for review.

(c) An investigation pertaining to prescribing or dispensing or administering of a controlled substance shall be presented to the inquiry panel within 120 days of the date of receipt of the grievance unless the circumstances of a particular grievance make it impossible to timely present the grievance to the inquiry panel.

(d)1. The executive director may hold an investigation pertaining to prescribing or dispensing or administering of a controlled substance in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency.

2. If an investigation pertaining to prescribing or dispensing or administering of a controlled substance is not presented to the inquiry panel within 120 days of the date of receipt of the grievance, the investigative report shall plainly state the circumstances of that particular grievance or investigation that made timely presentation to the inquiry panel impossible.

(e) The inquiry panel or executive director shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations as provided by KRS 311.591, 311.605, and 311.850(2).

(f) The inquiry panel shall further be empowered to request the attendance of any person at any meeting of the inquiry panel in regard to the investigation of any grievance or consideration of any disciplinary matter.

(g) The failure, without good cause, of any licensee to appear before the inquiry panel when requested shall be considered unprofessional conduct in violation of KRS 311.595(9) and 311.850(1)(s).

(3) The inquiry panel shall be empowered to request compliance with the reporting requirements of KRS 311.605 or 311.606 and may pursue an investigation, on its own initiative, in regard to an act of noncompliance or any other perceived violation of board statutes.

Section 3. Reports and Recommendations; Petitions. (1) If the inquiry panel determines that a grievance warrants the issuance of a complaint against a licensee, the inquiry panel shall cause a complaint to be prepared.

(2) If the panel chair determines that a grievance warrants the issuance of a complaint against a licensee and circumstances do not allow the timely presentation of the grievance to the inquiry panel, the panel chair shall cause a complaint to be prepared.

(3) If the inquiry panel determines that a disciplinary matter warrants the issuance of a show cause order against a licensee, the inquiry panel shall cause a proposed order to be prepared.

(4) The board may issue a show cause order against a licensee in regard to any application for licensure, obtaining, retaining, or reobtaining licensure.

Section 4. Complaints. The complaint issued by an inquiry panel shall:

(1) Be signed and dated;

(2) Be styled in regard to the matter of the license to practice in the Commonwealth of Kentucky held by the named licensee and designated with an appropriate case number; and

(3) Set forth:

(a) The board's jurisdiction in regard to the subject matter of the complaint; and

(b) In numerical paragraphs, sufficient information to apprise the named licensee of the general nature of the charges.

Section 5. Show Cause Orders. The show cause order shall:

(1) Be signed and dated by an officer of the board;

(2) Be styled in regard to the license, application for license, or application for renewal, registration, or reregistration of a license to practice in the Commonwealth of Kentucky held by or submitted by the named licensee, appropriately, and designated with an appropriate order number;

(3) Set forth:

(a) The board's jurisdiction in regard to the subject matter of the order; and

(b) In numerical paragraphs, the information which the board accepts to be true and the statutory basis for the board's finding that grounds exist for the discipline of the named licensee's license; and

(4) Direct the named licensee to show cause why disciplinary action should not be taken in view of the matters expressed in the order.

Section 6. Orders to Respond. Upon issuance of a complaint, the inquiry panel shall notify the charged licensee that:

(1) A response is due within thirty (30) days after receiving notice of the complaint; and

(2) Failure to respond within that time period may be taken by the board as an admission of the charges.

Section 7. Notice and Service of Process. Each notice shall be issued as required by KRS 13B.050.

Section 8. Proceedings Pursuant to the Issuance of a Complaint or Show Cause Order. (1) Appointment of hearing officer. The board shall appoint a hearing officer in accordance with KRS 13B.030 and 13B.040.

(2) Appointment of the prosecuting attorney. The board's general counsel or assistant general counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding,

unless the board appoints a special prosecuting attorney. The prosecuting attorney shall not participate in any deliberations of the board pursuant to the issuance of a complaint, show cause order, or order of temporary discipline.

(3) Appointment of advisory counsel. The board may appoint a representative of the Attorney General's office, the board's general counsel, or other attorney to act as advisory counsel to the board in regard to any deliberations of the board pursuant to the issuance of a complaint, show cause order, or order of temporary discipline.

(4) The provisions of KRS Chapter 13B shall govern the conduct of each proceeding.

Section 9. Mandatory Reporting; Disciplinary Sanctions; Emergency Action; Expedited Proceedings. (1)(a) Except as provided by KRS 431.073(7) and 533.258(2), every applicant shall report upon the applicant's initial application:

1. Any criminal conviction sustained or any plea of guilt, plea of nolo contendere, or Alford plea the applicant has entered to criminal charges in any state, regardless of adjudication;

2. any disciplinary action taken or sanction imposed upon the applicant's license to practice in any state, to include surrendering or placing the applicant's license in an inactive or retirement status to resolve a pending investigation by the licensing authority; and

3. if the applicant is currently under investigation by the licensing authority of any other state for possible violations of the licensing or regulatory statutes of that state.

(b) Failure to report a criminal conviction or plea, or action taken by another licensing board, as required of an applicant by paragraphs (a)1. through 3. of this subsection, shall constitute a violation of the operative licensing statutes and may be grounds for denial of a license.

(c) Upon a finding by the board that the applicant committed a violation, the board shall consider and give weight to the legislative intent expressed in KRS 218A.205(3)(f) when exercising its discretion whether to deny or grant the license or to grant the license subject to terms of restriction or limitation.

(d) If an applicant reports being the subject of a pending criminal investigation or of a pending investigation by a state licensing authority, the board shall defer any action upon that application until it has received official notice that the criminal or state licensing investigation has been completed and official notice of what action was taken as a result of the investigation.

(2)(a) Every licensee shall report to the board:

1. any criminal conviction or plea of guilt, nolo contendere, or Alford plea to any criminal charges, regardless of adjudication, within ten (10) days of the entry of judgment of conviction or the entry of the plea, entered into in any state. As part of this reporting, the licensee shall provide a copy of the judgment of conviction or plea documents.

2. any disciplinary action taken or sanction imposed upon the person's license in any state, including surrendering a license or placing a license into inactive or retired status to resolve a pending licensing investigation, within ten (10) days. As part of this reporting requirement, the licensee shall provide a copy of the order issued by or entered into with the other licensing board.

(b) Failure to report a criminal conviction or plea, or action taken by another licensing board as required of a licensee by paragraphs (a)1. and 2. of this subsection, shall constitute a violation of the operative licensing statutes and may be grounds for discipline of a license.

(c) Upon a finding by the board that the licensee committed a violation, the appropriate panel shall consider and give weight to the legislative intent expressed in KRS 218A.205(3)(f) when exercising its discretion whether to impose discipline, including up to indefinite restriction or revocation, against the license.

(d)1. Failure to report a criminal conviction, a plea, or a disciplinary sanction by another

licensing board as required by this section shall constitute a violation of law which constitutes an immediate danger to the public health, safety, or welfare.

2. If the board or one (1) of its panels learns that a licensee has suffered a qualifying criminal conviction or disciplinary sanction and has failed to report it as required by this section, the panel or its chair may immediately issue an emergency order appropriately suspending or restricting the licensee in accordance with this section.

3. If an emergency order is issued and an emergency hearing is conducted pursuant to KRS 13B.125(3), the hearing officer shall not modify or amend the scope of the emergency order if there is substantial evidence to support the finding that the licensee failed to report a qualifying criminal conviction or disciplinary sanction as required by this section.

(e)1. If the only violation charged in a complaint against the licensee is a criminal conviction or disciplinary sanction described in this section, and the conviction or disciplinary action may be proved by accompanying official certification, the board shall take appropriate steps to expedite the resolution of that complaint.

2. Following receipt of the licensee's response to the complaint, board counsel shall promptly file a motion for summary disposition on the ground that no genuine issues of material fact are in dispute, pursuant to KRS 13B.090(2).

3. The licensee shall file a response to the motion for summary disposition within twenty (20) days of receipt of the motion.

a. The licensee shall not re-litigate either the criminal conviction or disciplinary sanction.

b. The licensee may offer as defense that the certification of the document is fraudulent.

4.a. The hearing officer shall issue a ruling upon the motion as soon as possible but no later than thirty (30) days after the motion is submitted for decision.

b. If the hearing officer issues a recommended order, the recommended order shall be presented to the board's hearing panel at its next meeting for resolution and imposition of the sanction permitted by this section.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Information on Filing a Grievance", January 2013;

(b) "Consumer's Guide to the KBML", January 2013;

(c) "Grievance Form", January 2013; and

(d) "Waiver of Privilege, Agreement to Release Records", January 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m. (11 Ky.R. 317; Am. 557; eff. 10-9-1984; 13 Ky.R. 670; eff. 11-11-1986; 16 Ky.R. 1230; eff. 2-3-1990; 20 Ky.R. 1658; 2615; eff. 3-14-1994; 39 Ky.R. 521; 1655; 1997; eff. 3-4-2013; 40 Ky.R. 1130; 1393; eff. 1-15-2014; 42 Ky.R. 2800; 43 Ky.R. 12; eff. 7-20-2016; 47 Ky.R. 1053, 1540; eff. 2-11-2021.)