

201 KAR 12:190. Complaint and disciplinary process.

RELATES TO: KRS 317A.070, 317A.140, 317A.145

STATUTORY AUTHORITY: KRS 317A.060, 317A.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.145 authorizes the board to investigate complaints and, where appropriate, take disciplinary action for violations of KRS Chapter 317A and the administrative regulations promulgated by the board. KRS 317A.070 requires the board to hold hearings to review the board's decision upon the request of any licensee or applicant affected by the board's decision to refuse to issue or renew a license or permit, or to take disciplinary action against a license or permit. This administrative regulation establishes the board's complaint and disciplinary process.

Section 1. Definitions. (1) "Complaint" means any writing received by the board alleging conduct by an individual or entity that may constitute a violation of KRS Chapter 317A or 201 KAR Chapter 12.

(2) "Respondent" means the person or entity against whom a complaint has been made.

Section 2. Complaint Committee. The board may appoint a committee of no more than two (2) board members to review complaints, initiate investigations, participate in informal proceedings to resolve complaints, and make recommendations to the board for disposition of complaints. The board staff and board counsel may assist the committee.

Section 3. Complaint Procedures. (1) Complaints shall be submitted on the board's Complaint Form, signed by the person making the complaint, and describe with sufficient detail the alleged violation(s) of KRS Chapter 317A, or 201 KAR Chapter 12. The Complaint Form shall be made available on the board's Web site at <http://kbc.ky.gov>.

(2) A copy of the complaint shall be provided to the respondent. The respondent shall have ten (10) days from the date of receipt to submit a written response. The complaints committee or the board administrator may extend these timelines as appropriate.

(3) The complaint committee shall meet once a month. A complaint shall arrive ten (10) days prior to the meeting to meet that month's deadline for making a recommendation to the board. The complaint committee shall review the complaint, the response, and any other relevant information or material available, and recommend that the board:

- (a) Dismiss the complaint;
- (b) Order further investigation;
- (c) Issue a written admonishment for a minor violation; or
- (d) Issue a notice of disciplinary action informing the respondent of the following:
 - 1. The statute(s) or administrative regulation(s) violated;
 - 2. The factual basis for the disciplinary action;
 - 3. The penalty to be imposed; and
 - 4. The licensee's or permittee's right to request a hearing.

(4) A written admonishment shall not be considered disciplinary action by the board, but may be considered in any subsequent disciplinary action against the licensee or permittee. A copy of the written admonishment shall be placed in the licensee or permittee's file at the board office.

(5) If the board determines that a person or entity is engaged in the unlicensed practice of cosmetology, esthetics practices, or nail technology, the board may:

(a) Issue to the person or entity a written request to voluntarily cease the unlicensed activity;
or

(b) Seek injunctive relief in a court of competent jurisdiction pursuant to KRS 317A.020(7).

(6) Any board member who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint, which could influence an impartial decision, shall disqualify himself or herself from participating in the adjudication of the complaint.

Section 4. Settlement by Informal Proceedings. (1) The board, through its complaints committee or counsel, may, at any time during this process, resolve the matter through informal means, including an agreed order of settlement or mediation.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the respondent and board chair, or the chair's designee.

Section 5. Hearings. (1) A written request made by the respondent for a hearing shall be filed with the board within thirty (30) days of the date of the board's notice that it intends to refuse to issue or renew a license or permit, to deny, suspend, probate, or revoke a license or permit, or to impose a fine on a licensee or permittee.

(2) If no request for a hearing is filed, the board's refusal to issue or renew a license or permit, or the board's notice of disciplinary action, shall become effective upon the expiration of the time to request a hearing.

Section 6. Incorporation by Reference. (1) "Complaint Form", April 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Cosmetology, 111 St. James Court, Suite A, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (15 Ky.R. 1726; eff. 3-10-1989; 20 Ky.R. 1036; eff. 1-10-1994; 40 Ky.R. 392; 1037; eff. 12-6-2013; 4 Ky.R. 2563; 45 Ky.R.335; eff. 8-31-2018.)