

201 KAR 15:080. Complaints.

RELATES TO: KRS 316.150

STATUTORY AUTHORITY: KRS 316.150, 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) requires the board to administer and enforce the provisions of KRS Chapter 316 and authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A. KRS 316.150 authorizes the board to take disciplinary action against the license of an embalmer, a funeral director, or a funeral establishment or against the registration of an apprentice for violations of KRS Chapter 316. This administrative regulation establishes the procedure for filing complaints with the board.

Section 1. Complaint. (1) A complaint that an embalmer, a funeral director, a funeral establishment, or an apprentice has violated the provisions of KRS Chapter 316 or the administrative regulations promulgated thereunder shall be made in writing to the board.

(2) The person making the complaint shall be identified in the complaint, shall provide his or her contact information, and shall sign the complaint.

(3) Anonymous complaints shall not serve as the sole justification for disciplinary action, but the board may use the information provided in any anonymous complaint as cause for further investigation.

(4) The board may file a complaint based upon credible information in its possession that is sufficient to establish probable cause for further investigation and possible disciplinary action.

(5) No complaint may be made more than two (2) years following the discovery of the alleged violation of KRS Chapter 316 or the administrative regulations promulgated thereunder. Discovery for this purpose shall be the point in time when the complainant actually discovers, or a reasonably diligent complainant would have discovered, the facts constituting the violation.

Section 2. Notice to Respondent. (1) The board shall send via certified mail, return receipt requested, a notice with a copy of the complaint to the respondent requesting a written response to the complaint.

(2) The respondent shall file a written response to the complaint with the board within twenty (20) days after receipt of notice of the complaint. The respondent shall send a copy of the response to the complainant, and certify in the response that it has been so sent.

(3) The board may treat failure of a duly-notified respondent to file a response within twenty (20) days of receipt of the complaint as a default. Upon default, the board may treat the allegations contained in the complaint as admitted and impose such discipline as the board deems appropriate.

Section 3. Investigation of Complaint. (1) The board may assign one (1) or more persons to conduct an investigation of the facts alleged in a complaint and submit a report to the board.

(2) The board may, at any time, conduct an investigation on its own initiative without receipt of a written complaint if the board has reason to believe that a violation of KRS Chapter 316 or the administrative regulations promulgated thereunder is taking, or has taken, place.

Section 4. Dismissal, Resolution, and Discipline. (1) The board may dismiss a complaint at any time if the board determines that the facts stated in the complaint, or facts known to the board after investigation, fail to create a finding of probable cause of a violation which would warrant disciplinary action. The board shall notify the complainant and the respondent in writ-

ing if it dismisses the complaint.

(2) The board may negotiate a resolution of a complaint by an agreed order if the board determines that there is probable cause that a violation has occurred and that disciplinary action may be warranted.

(3) The board may impose disciplinary action established by KRS 316.150 against a licensee or registrant if the board finds, after the conduct of a KRS 13B hearing, that a violation of KRS Chapter 316 or of the administrative regulations promulgated thereunder has occurred. (BEFD-Rule 1; 1 Ky.R. 1014; eff. 6-11-75; Am. 21 Ky.R. 1747; eff. 3-6-1995; 22 Ky.R. 2322; 23 Ky.R. 429; eff. 8-1-1996; 46 Ky.R. 99, 1099; eff. 11-1-2019.)