

201 KAR 17:070. Complaint procedure.

RELATES TO: KRS 334A.080(1), 334A.180

STATUTORY AUTHORITY: KRS 334A.080(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.180 establishes the causes for which disciplinary action may be taken against a licensee. This administrative regulation establishes procedures for the filing, evaluation, and disposition of an administrative complaint.

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 (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 334A; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation.

(3) "Complaint" means a written allegation of misconduct by a credentialed individual or other person which might constitute a violation of KRS Chapter 334A, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint screening committee" means a committee consisting of three (3) persons appointed by the chairman of the board to review complaints, investigate reports, and to participate in informal proceedings to resolve a formal complaint, and may include the executive director of the board or another staff member.

(5) "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 or civil action.

(6) "Informal proceedings" means the proceedings instituted at a stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "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.

Section 2. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity;

(b) Shall be:

1. In writing; and
2. Signed by the person offering the complaint; and
- (c) May be filed by the board based upon information in its possession.

(2)(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of his copy of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant. The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to

warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, the board shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, the board shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

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 complaint screening 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:

1. There has been a prima facie violation of KRS Chapter 334A or the administrative regulations promulgated thereunder; and

2. A complaint shall be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, the board shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3)(a) If the board determines that a violation has occurred but is not serious, the board may issue a written admonishment to the licensee.

(b) A copy of the written admonishment shall be placed in the permanent file of the licensee.

(c) The licensee shall have the right to:

1. File a response in writing to the admonishment within thirty (30) days of its receipt and have the response placed in his permanent file; or

2. File a request for a hearing with the board within thirty (30) days of the admonishment.

(d) Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 334A.030(2), the board shall:

(a) Order the individual to cease and desist from further violations of KRS 334A.030(2);

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 334A.030(2) with a request that appropriate action be taken under KRS 334A.990; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 334A.030(2) pursuant to KRS 334A.990(2).

Section 5. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) 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 334A or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 334A.180 with the exception of a written admonishment issued pursuant to Section 4(3) of this administrative regulation; and

(2) An action to restrain or enjoin a violation of KRS 334A.030(2). (12 Ky.R. 1558; eff. 4-17-86; Am. 26 Ky.R. 877; 1527; eff. 1-26-2000.)