

201 KAR 20:162. Disciplinary proceedings.

RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.091(8), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.091(2) requires that an administrative hearing for the denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B. KRS 314.091(8) authorizes the board, by administrative regulation, to provide for the recovery of costs of an administrative hearing. This administrative regulation establishes procedures for conducting an administrative hearing relating to disciplinary action.

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Composition of the Hearing Panel.

(1)(a) Except as established in paragraph (b) of this subsection, a disciplinary action shall be heard by a hearing panel consisting of two (2) members of the board, one (1) of whom shall be a registered nurse, and a hearing officer, who shall be:

1. An assistant attorney general; or
2. Other attorney appointed by the board.

(b) A hearing officer and one (1) member of the board may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license; or
2. Removal of a license from probationary status.

(2) A board member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

- (a) Discussed the merits of the action with agency staff;
- (b) Personal knowledge of the facts giving rise to the disciplinary action; or
- (c) Participated in the investigation of a disciplinary action.

(3) The hearing shall be transcribed by a court stenographer or video recorded.

Section 3. Response to Charges. The licensee or applicant shall file with the board a written answer to the specific allegations contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer may result in the issuance of a default order pursuant to KRS 13B.080(6). The hearing officer shall for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall be eligible to cast one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the

evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1) that shall be:

- (a) Consistent with the panel's deliberations; and
- (b) Submitted to the full board.

Section 6. Continuances; Proceedings in Absentia. (1) The board shall not postpone a case that has been scheduled for a hearing absent good cause. A request by a licensee or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause.

(2) The decision of whether or not to grant a continuance shall be made by the hearing officer.

(3) The burden shall be upon the licensee or applicant to be present at a scheduled hearing.

(4) Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. Hearing Costs. (1) If the order of the board is adverse to a licensee or applicant or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314, the board may impose the following costs:

- (a) The cost of stenographic services;
- (b) The cost of the hearing officer as determined by subsection (2) of this section; and
- (c) Other costs listed in subsection (3) of this section as applicable.

(2) The cost of the hearing officer shall be determined as established in paragraphs (a) through (c) of this subsection. The cost of a:

- (a) Disciplinary hearing shall be \$400 per day;
- (b) Reinstatement hearing shall be \$350; and
- (c) Default shall be \$300.

(3) Other costs may include:

- (a) Expert witness costs, including travel;
- (b) Travel for other witnesses;
- (c) Document reproduction costs; and
- (d) The cost of a certified copy of laboratory testing records.

Section 8. Reconsideration of Default Orders. (1) A default order issued by the board may be reconsidered.

(2) The party in default shall submit a written motion to the hearing officer requesting reconsideration.

(3) The hearing officer shall schedule a hearing on the motion for reconsideration. The hearing officer may order that the default order be set aside if the party in default presents good cause.

(4) If a default order is set aside, the provisions of 201 KAR 20:161 shall apply.

Section 9. Prescribing or Dispensing Controlled Substance Cases. (1) An investigation pertaining to prescribing or dispensing of a controlled substance shall produce a charging decision by the board within 120 days of the receipt of the complaint unless the circumstances of a particular complaint make it impossible to timely produce the charging decision.

(2) The board may hold an investigation pertaining to prescribing or dispensing of a controlled substance in abeyance for a reasonable period of time in order to permit a law enforce-

ment agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency.

(3) If an investigation pertaining to prescribing or dispensing of a controlled substance does not produce a charging decision within 120 days of the receipt of the complaint, the investigative report shall plainly state the circumstances of that particular investigation or complaint that made timely production of a charging decision impossible.

Section 10. Change in Licensure Status. (1) Pursuant to the Nurse Licensure Compact, KRS 314.475, if a nurse whose primary state of residence is Kentucky and who holds a Kentucky license with multistate privileges incurs a disqualifying event, the license shall be converted to a single state license valid only in Kentucky.

(2) The disqualifying events that may cause this change in status shall be:

(a) Conviction or found guilty of or entered into an agreed disposition of a felony offense;

(b) Conviction or found guilty of or entered into an agreed disposition of a misdemeanor offense related to the practice of nursing;

(c) Current enrollment in an alternative program; or

(d) An encumbered nursing license or privilege to practice due to disciplinary action.

(3)(a) The board shall inform the nurse in writing of its intent to change the status of the Kentucky license.

(b) The nurse may request an administrative hearing on this action. A request shall be made in writing to the board within twenty (20) days.

(c) Failure to request an administrative hearing within twenty (20) days shall constitute a waiver of the right to a hearing.

(4) The procedure established in this section shall not be in lieu of but may be in addition to any potential disciplinary action the board may seek based on the disqualifying event. (12 Ky.R. 87; Am. 328; eff. 8-13-1985; 14 Ky.R. 579; 1069; eff. 11-6-1987; 17 Ky.R. 2760; eff. 4-11-1991; 19 Ky.R. 2669; eff. 8-6-1993; 22 Ky.R. 306; eff. 9-20-1995; 24 Ky.R. 1755; 2111; eff. 4-13-1998; 28 Ky.R. 679; eff. 10-17-2001; 35 Ky.R. 2791; eff. 8-12-2009; 37 Ky.R. 428; eff. 10-20-2010; 45 Ky.R. 1742, 2582; eff. 3-13-2019; 46 Ky.R. 2688; 47 Ky.R. 56; eff. 7-29-2020.)