

## **201 KAR 26:130. Grievances and administrative complaints.**

RELATES TO: KRS 319.005, 319.032, 319.082, 319.118, 319.990.

STATUTORY AUTHORITY: KRS 319.032(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for investigating complaints or suspected violations of KRS Chapter 319 and notifying proper law enforcement authorities. KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a credential holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations of applicable statutes, administrative regulations, and orders of the board. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of administrative complaints asserted against credential holders or applicants for licenses.

### Section 1. Definitions.

(1) "Administrative complaint" means a formal administrative pleading authorized by the board that sets forth charges against a credential holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(2) "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also refer to a hearing panel.

(3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or 201 KAR Chapter 26.

(4) "Grievance" means any allegation alleging misconduct by a licensed holder or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.

(5) "Order" means the whole or any part of a final disposition of a hearing.

(6) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(7) "Respondent" means the person against whom a grievance or administrative complaint has been made.

### Section 2. Grievance.

(1) Source. A grievance may be initiated by:

- (a) The board;
- (b) The public; or
- (c) Any governmental agency.

(2) Form.

(a) A grievance shall:

1. Be in writing;
2. Clearly identify the person against whom the grievance is being made;
3. Contain the date;
4. Identify by printed name and signature the person making the grievance; and

5. Contain a clear and concise statement of the facts giving rise to the grievance.

(b) A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid grievance.

(c) The board shall not accept or process anonymous grievances or administrative complaints.

(3) Receipt. A grievance may be received by any:

(a) Board member;

(b) Credential holder designated by the board; or

(c) Staff member.

(4) Response. A copy of the grievance shall be provided to the respondent by the board. The respondent shall have fifteen (15) days to file a written response to the grievance with the board.

(5) Initial review. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or a panel of the board shall review the grievance and response. At that time, the board shall determine if an investigation is warranted, and if so, the board may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the grievance.

(6) Investigation.

(a) The respondent shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he or she may respond further to the allegations of the grievance. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of grievance and investigative report.

1. The board shall determine if there has been a prima facie violation of KRS 319.082 based on consideration of the:

a. Grievance;

b. Investigative report, if an investigation was warranted under subsection (5) of this section; and

c. Psychological or physical examination, if one was ordered under Section 6 of this administrative regulation.

2. If the investigator is a member of the board, the investigating member shall not vote on disposition of the grievance.

3. If it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the board shall notify the person making the grievance and the respondent that no further action shall be taken at the present time.

4. If it is determined that there is a prima facie violation, the board shall:

a. Issue an administrative complaint against the credential holder or applicant;

b. File suit to enjoin the violator; or

c. Seek criminal prosecution pursuant to KRS 319.990.

Section 3. Administrative Complaint. If the board determines that the grievance shall be made an administrative complaint, the administrative complaint shall be adjudicated pursuant to KRS Chapter 13B.

Section 4. Administrative Response. Within twenty (20) days of service of the formal administrative complaint, the respondent shall file with the board a written response to the specific al-

legations set forth in the administrative complaint. Allegations not properly responded to shall be deemed admitted, and may form the basis for a default adjudication against the person subject to the administrative complaint if the requisite elements of a violation are admitted. The board may, for good cause, permit the late filing of a response.

#### Section 5. Allegations of Sexual Misconduct by a License Holder.

(1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism for identification adopted by the board.

(2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.

(3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

(4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session.

#### Section 6. Fitness for Duty Examination.

(1) If there is reasonable cause to believe that a credential holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the credential holder or applicant to submit to an examination by a psychologist or other health care provider designated by the board to determine the credential holder's or applicant's fitness and competence to practice psychology.

(2) The expense of this examination shall be borne by the board.

(3) The board shall then consider the findings and conclusion of the examination.

(4) A copy of the examination shall be provided by the board to the respondent. The respondent may file with the board a written response to the examination within fifteen (15) days of the date on which the findings and conclusion of the examination was provided to the respondent.

(5)(a) Based on consideration of the psychological or physical examination, the board shall determine if there has been a prima facie violation of KRS 319.082.

(b) If it is determined that the findings and conclusion of the examination do not constitute a prima facie violation of KRS 319.082, the board shall so notify the person.

(c) If it is determined that there is a prima facie violation of KRS 319.082, the board shall issue an administrative complaint against the credential holder or applicant.

#### Section 7. Board Member Training for Cases of Sexual Misconduct.

(1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).

(2) An investigator shall not be assigned to cases where sexual misconduct has been alleged until the required training has been completed.

(3) Training shall consist of a three (3) hour course which includes the content specified by KRS 319.032(1)(e) and may be delivered by means of either live presentation, individual tutorial, or electronic media. (13 Ky.R. 2162; eff. 7-2-1987; 20 Ky.R. 579; 933; eff. 10-21-1993; 28 Ky.R. 1459; 1802; eff. 2-7-2002; 37 Ky.R. 1516; 1977; eff. 3-4-2011; 43 Ky.R. 1807; 44 Ky.R. 19; eff. 7-17-2017; 45 Ky.R. 1324, 2073; eff. 1-23-2019; Crt eff. 9-5-2019.)