

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

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 through use of hard copy or digital forms provided by the board;
2. Clearly identify the ~~[person]~~ licensee against whom the grievance is being made;
3. Contain the date the grievance is initiated;
4. Clearly identify the complainant through printed name, contact information and signature~~[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 including the relationship of the complainant to the licensee.
6. Indicate if the grievance arises out of a court-involved evaluation, consultation, treatment or psychoeducation of a person(s);
7. Provide consent or a means of acquiring consent for investigations involving minors or adults under guardianship from their legal guardian(s);
8. Provide a waiver of confidentiality for the complainant and the complainant's minor children or wards, if applicable.

(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) A grievance shall be filed with the Board at its designated office or place of business, or by e-mail. [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 in a timely manner along with additional information and documents supplied by the complainant throughout the administrative process.

(5) The respondent shall have ~~[fifteen (15)]~~ twenty (20) days to file a written response to the grievance with the board.

~~(6)[(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.]~~ of the grievance by the complaint screening committee:

(a) All grievances will be assigned an identification number and be referred to as such to ensure anonymity.

(b) At the next subsequent regularly-scheduled meeting of the board's designated complaint screening committee or as soon thereafter as practicable, the complaint screening board or a panel committee of the board shall review the grievance and response as well as determine if the matter is within the board's jurisdiction. At that time should all necessary information for decision making be available, the complaint screening committee may recommend:

1. Dismissal of the grievance if the complaint screening committee determines there is no evidence of a violation of law or ethics as provided by the statutes or regulations pertaining to the practice of psychology; if it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the complaint screening committee shall notify the complainant and the respondent that no further action shall be taken at the present time.

2. Investigation;

3. Tabling the decision to allow for acquisition of additionally requested information, which may include a fitness for duty evaluation; or

4. Referral of the grievance to the full board for further review and action; or

5. Issuing a voluntary assurance of compliance to unlicensed individuals whom engage in the practice of psychology.

~~(7)[(6)] Investigation. The board shall make available investigators to explore the ethical and professional conduct of respondents related to the filing of grievances.~~

~~(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 grievance₁ 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.]~~

(a) The investigator shall review the factors and variables within the grievance that are pertinent to the practice of psychology and consider the circumstances the board's review is required.

(b) The respondent shall be contacted by the investigator or board administrator to begin the investigation. With the consent of the respondent, a meeting may be scheduled at which time he or she the respondent may further respond reply to 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) 1. If the grievance pertains to a minor(s) or any person under legal guardianship as a consumer, collateral or participant of the investigation, the investigator will acquire consent from all-involved legal guardians of the minor(s) or ward(s) prior to proceeding with the investigation, unless otherwise ordered by a court of law.

2. If the grievance arises out of a court-involved evaluation, treatment or psychoeducation of a person whereby the respondent's engagement was affiliated with a legal action, the investigator shall secure information from all involved parties, as well as judicial officers and other involved professionals concerning the role of the respondent and the purpose and scope of the respondent's court-affiliation. The investigator will also secure information from opposing parties and other stakeholders in the legal process when assessing the role of the respondent in legal proceedings and how the role is related to the grievance.

3. Investigators will consider information from multiple data-gathering methods in order to increase accuracy and objectivity.

4. Investigators shall strive to use a balanced and fair process of investigation through collection of valid collateral source information that demonstrates sufficiency and reliability.

5. In the investigation of the grievance, the investigator shall review all data provided from both the complainant and the respondent as well as answer to all requested information from the board.

6. Investigators will perform reasonable inquiry when confronted with information about a possible violation of law or ethics; however, the scope of the investigation shall be delineated by grievance.

7. Investigators will be free from multiple relationships and conflicts of interest prior to acceptance and through completion of the investigation.

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

9. Investigators will complete the investigation in less than sixty (60) days from the respondent's final interview. When extensions are needed, the investigator will inform the complaints screening committee of the reason for the extension as well as an estimated date of completion in fourteen (14) day intervals.

(8) Report of investigation. Upon the completion of the investigation, the person or persons making the investigation shall submit a written report to the board complaints screening committee containing a succinct statement of the facts disclosed discovered by the investigation. The investigator will also acknowledge incomplete, unreliable or missing data.

(9) After consideration of the grievance and investigative report by the complaint screening committee, the committee may consider the options in paragraph (6)b of this section.

1(a) If referred to the board, the board shall determine if there has been a prima facie violation of KRS 319.082 based on consideration of the following, with the weight it sees fit:

1. Grievance;

2. Response;

3. Investigative report, if an investigation was warranted; and

4. Fitness for duty examination, if an examination was warranted

(10) 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.

(11) 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 allegations 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]~~ respondent 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.

JEAN A. DETERS, PSY. D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board website. Individuals in-

interested in attending this hearing shall notify this agency in writing by May 21, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for grievances and administrative complaints. This administrative regulation further sets certain requirements regarding: who may initiate a grievance; the form of the grievance; where the grievance shall be filed; sending a copy of the grievance to the respondent who shall have twenty days to file a response; the initial review of the grievance and response by the board; an investigation if the board determines one is warranted, including contacting the respondent, a right to representation at an investigation meeting, and a report of investigation; consideration of the grievance, response, investigation, and certain other information by the board; and the board's determination and any further actions to take as a result of the determination. Additionally, this administrative regulation establishes that any administrative complaint shall be adjudicated pursuant to KRS Chapter 13B and the requirements for the respondent's response to an administrative complaint. This administrative regulation also sets certain requirements regarding fitness for duty examinations and for board member training for cases of sexual misconduct.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for grievances and administrative complaints.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies procedures for grievances and administrative complaints.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update procedures for grievances and administrative complaints.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for grievances and administrative complaints.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist remaining current with their training.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated procedures for grievances and administrative complaints.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for grievances and administrative complaints.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increases in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue for the Board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: