

## **201 KAR 28:150. Disciplinary proceedings.**

RELATES TO: KRS 319A.190

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A authorizes the board to promulgate administrative regulations establishing a procedure by which the board will institute actions against an OTR/L or a COTA/L for violation of the Act, and the administrative regulations promulgated thereto or for professional misconduct. This administrative regulation sets forth the procedure and process by which such complaints shall be instituted.

Section 1. Definitions. The following definitions, in conjunction with the provisions of 201 KAR 28:010, shall apply to this administrative regulation as well as 201 KAR 28:160:

(1) "Chairman" means the chairman of the board.

(2) "Investigative assistant" means an appropriately licensed individual designated by the board to assist the board's attorney in the investigation of a complaint or an investigator employed by the Attorney General.

(3) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 319A or the administrative regulations promulgated thereunder by a licensed individual or other person.

(4) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of a specified provision of KRS Chapter 319A or the administrative regulations promulgated thereunder.

(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.

(6) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any formal complaint.

(7) "Informal proceedings" means proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal dispensation of any matter without further recourse to formal disciplinary procedures.

Section 2. Reception of Complaints. (1) Complaints may be submitted by an individual, organization or entity. Complaints shall be in writing and shall be signed by the person offering the complaint. The board may also file a complaint based on information in its possession.

(2) Upon receipt of a complaint, a copy of the complaint shall be sent to the board's attorney for an initial review and preliminary recommendation of subsequent action to the board. A copy of the complaint shall also be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The response of the individual shall be required for the next regularly scheduled meeting of the board except that the individual shall be allowed a period of twenty (20) days from the date of receipt to make a response.

Section 3. Preliminary Recommendations and Initial Board Review. (1) After the receipt of a complaint and the period for the individual's response has concluded, the board shall consider the preliminary recommendation of the board's attorney, the individual's response, and any other relevant material available to the board in the initial review of the complaint. The determination that the board makes at this point is whether or not there is enough evidence to warrant a formal investigation.

(2) When in the opinion of the board a complaint does not warrant the formal investigation of a complaint against an individual, the board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants the formal investigation of a complaint against either a licensed individual or a person who is practicing occupational therapy without a license, the board shall authorize its attorney and a designated investigative assistant to investigate the matter and report their findings and recommendations to the board at their earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the board's attorney or the investigative assistant shall report to the board their findings and recommendations as to the proper disposition of the complaint. The determination that the board makes at this point is whether or not there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and that a hearing should be held.

(2) When in the opinion of the board a complaint does not warrant the issuance of a formal complaint and the holding of a hearing, the complaint shall be dismissed or other appropriate action taken. The board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants the issuance of a formal complaint, the board shall cause a complaint to be prepared stating clearly the charge or charges to be considered at the hearing. The formal complaint shall be signed by the chairman and served upon the individual as required by Section 6 of this administrative regulation.

(4) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who is practicing occupational therapy without a license, the board shall cause a complaint to be prepared and signed by the chairman of the board, stating the board's belief the charges are based upon reliable information. The complaint shall be forwarded to the appropriate county attorney with a request that appropriate action be taken under KRS 319A.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of occupational therapy.

Section 5. Settlement by Informal Proceedings; Letter of Admonishment. (1) The board, through counsel 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. Any 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 of the board.

(2) The board may, at any time during this process, issue a letter of admonishment to the individual who is named in the complaint as a means of resolving the complaint. The action may be taken if it is determined by the board that this is an appropriate method of dispensing with the complaint. Such letter of admonishment shall be sent to the individual with a copy placed in the individual's permanent file. Within thirty (30) days of the date of the letter, the individual shall have the right to file a written response to the letter and have it attached to the letter of admonishment and placed in the permanent file. The individual shall also, within thirty (30) days of the date of the letter, have the right to appeal the letter of admonishment and be granted a full hearing on the complaint. If this appeal is requested, the board shall immediately file a formal complaint in regard to the matter and set a date for a hearing.

Section 6. Notice and Service of Process. (1) Any notice required by the Act or this administrative regulation shall be in writing, dated and signed by the chairman of the board.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's last known address of which the board has record or, if known, by such service on the named individual's attorney of record, if appropriate. Refusal of service if by certified mail; or avoidance of service if hand-delivered shall not prevent the board from pursuing proceedings as may be appropriate.

(3) When notice of the initial date for the administrative hearing is given by either the board or the hearing officer, the notice shall be sent to the appropriate person at least twenty (20) days prior to the date of the hearing. (13 Ky.R. 1191; eff. 1-13-87; Am. 20 Ky.R. 1063; 1859; eff. 2-10-94.)