

201 KAR 29:030. Complaint processing procedures.

RELATES TO: KRS 314A.225

STATUTORY AUTHORITY: KRS 314A.205

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314A.205(1) requires the board to investigate persons engaging in practices which violate the provisions of KRS Chapter 314A. This administrative regulation establishes the detailed procedures for the investigation of complaints received by the board.

Section 1. Definitions. (1) "Chairperson" means the presiding official of the board.

(2) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of a specified provision of KRS Chapter 314A or the administrative regulations promulgated thereunder.

(3) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 314A or the administrative regulations promulgated thereunder by a certified individual or other person.

(4) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a certified individual or other person and commences a formal disciplinary proceeding.

(5) "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.

(6) "Informal proceedings" means the 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.

(7) "Investigative assistant" means an appropriately-certified 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 or the board.

Section 2. Reception of Complaints. (1) A complaint may be submitted by an individual, organization, or entity. A complaint 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 certified 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 shall be 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 certified individual or a person who may be practicing respiratory care without ap-

propriate certification, 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 his or her findings and recommendations as to the proper disposition of the complaint. The determination that the board makes at this point shall be 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 chairperson and served upon the individual as required by KRS 13B.050.

(4) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who may be practicing respiratory care without proper certification, the board shall cause a formal complaint to be prepared and signed by the chairperson of the board, stating the board's belief the charges are based upon reliable information. The formal complaint shall be forwarded to the county attorney of the county of residence of the person allegedly practicing respiratory care without appropriate certification with a request that appropriate action be taken under KRS 314A.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of respiratory care.

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 chairperson 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. This action may be taken if it is determined by the board that this is an appropriate method of dispensing with the complaint. The letter of admonishment shall be sent to the individual with a copy placed in the individual's permanent file. A copy may also be sent to the government agencies deemed appropriate by the board. 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. Any notice required by KRS Chapter 314A or this administrative regulation shall be issued in accordance with KRS 13B.050. (19 Ky.R. 835; Am. 1070; eff. 11-9-92; 27 Ky.R. 3132; 28 Ky.R. 69; eff. 7-16-2001.)