

201 KAR 34:050. Complaint procedure.

RELATES TO: KRS 309.137

STATUTORY AUTHORITY: KRS 309.1315(1), (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315 authorizes the board to promulgate administrative regulations establishing a procedure by which the board will institute actions against a licensee for violation of the provisions of KRS 309.130 to 309.1399 or 201 KAR Chapter 34 or for professional misconduct. This administrative regulation sets forth the procedure and process by which those complaints shall be reviewed by the board.

Section 1. Definitions. (1) "Act" means KRS 309.130 through 309.138.

(2) "Chair" means the chair or vice-chair of the board.

(3) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of the KRS 309.130 through 309.138 or of 201 KAR Chapter 34.

(4) "Complaint" means any written allegation of misconduct by an individual licensed by the board or other person which might constitute a violation of KRS 309.130 through 309.138 or of 201 KAR Chapter 34.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against an individual licensed by the board or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint.

Section 2. Receipt of Complaints. (1) A complaint:

(a) May be submitted to the board by an:

1. Individual;
2. Organization; or
3. Entity.

(b) Shall be:

1. In writing; and
2. Signed by the person offering the complaint.

(c) May be filed by the board based upon information in its possession pursuant to KRS 309.137(3).

(2) Upon receipt of a complaint:

(a) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant. The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the board shall consider the individual's response, complainant's reply to the response, and any other relevant material available and determine whether a for-

mal investigation of the complaint is warranted.

(2) If the board determines that a formal investigation is not warranted and that the complaint is without merit, it shall:

- (a) Dismiss the complaint; and
- (b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

- (a) Authorize an investigation into the matter; and
- (b) Order a report to be made to the board at the earliest opportunity.

Section 4. Result of Formal Investigation. (1) Upon completion of the formal investigation, the investigator shall present a synopsis of the facts compiled in the investigation of the complaint to the board and a recommendation regarding the disposition of the complaint.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

- (a) Dismiss the complaint; and
- (b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that probable cause exists that a violation of the Act or 201 KAR Chapter 34 has occurred, the board shall:

(a) Authorize the board attorney to prepare a formal complaint which states clearly the charge or charges to be considered at the hearing on the matter to be held pursuant to the requirements of KRS Chapter 13B; and

(b) Review the formal complaint which, if approved, shall be signed by the chair and served upon the individual as required by KRS Chapter 13B.

(4) If the board determines that a person may be in violation of KRS 309.1305(2), it shall:

(a) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 309.1305(2) with a request that appropriate action be taken under KRS 309.1339; or

(b) Initiate action in Franklin Circuit Court to seek injunctive relief to stop the unauthorized practice of licensed professional art therapy.

Section 5. Settlement by Informal Proceedings. (1) The board through counsel and a board member designated by the board 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.

(2) An 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 chair.

(3) The board may employ mediation as a method of resolving the matter informally. (28 Ky.R. 1012; Am. 1361; eff. 12-19-2001; 36 Ky.R. 646; eff. 12-4-2009; 44 Ky.R. 46; eff. 8-4-2017.)