

## **201 KAR 43:060. Complaint and Disciplinary Process.**

RELATES TO: KRS 319C.050(4), 319C.060(2), 319C.070, 319C.110

STATUTORY AUTHORITY: KRS 319C.060(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2) requires the board to promulgate an administrative regulation governing the regulation of licensees. KRS 319C.070, 319C.050(4), and 319C.110 require the board to investigate and take disciplinary action against licensees who violate KRS Chapter 319C and the associated administrative regulations. This administrative regulation details the process by which the board completes those investigations and takes that action.

Section 1. Definitions. (1) "Act" means KRS Chapter 319C.

(2) "Board" is defined by KRS 319C.010(3).

(3) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS Chapter 319C or 201 KAR Chapter 43.

(4) "Complaint Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(5) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a licensee or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(6) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in unlicensed practice or using a title without holding a license.

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

(8) "Presiding officer" means the person appointed by the board to preside at a hearing held pursuant to KRS Chapter 13B, and shall include a hearing officer, a member or members of the hearing panel, or both.

(9) "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) Source of initiating complaint. An initiating complaint may be initiated by the board, by the public, or by a governmental agency. A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating complaint.

(2) Form of initiating complaint. Initiating complaints shall:

(a) Be in writing;

(b) Clearly identify the person against whom the initiating complaint is being made;

(c) Contain the date;

(d) Identify by signature the person making the initiating complaint; and

(e) Contain a clear and concise statement of the facts giving rise to the initiating complaint.

(3) Receipt of initiating complaint. An initiating complaint shall be submitted to the Board Office at the Office of Occupations and Professions.

(4) Response. A copy of the initiating complaint shall be mailed to the respondent. The respondent shall file with the board a written response to the initiating complaint:

(a) Within fifteen (15) days of the date on which the initiating complaint was mailed; or

(b) Within a specified period of time if an extension is requested in writing by the respondent and granted by the board. In order to be granted an extension, the respondent shall provide

proof of good cause justifying the extension.

(5) Complaint Committee.

(a) The complaint committee shall consist of no more than two (2) board members appointed by the chair of the board to:

1. Review initiating complaints, responses, and investigative reports;
2. Participate in informal proceedings to resolve formal complaints; and
3. Make recommendations for disposition of initiating complaints and formal complaints to the full board.

(b) The complaint committee may be assisted by the board staff and counsel to the board.

(6) Consideration of initiating complaint. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or the complaint committee shall review the initiating complaint and response. The board, upon recommendation of the complaint committee, shall determine if an investigation is warranted, and if so, the board shall appoint an agent or representative of the board to conduct an investigation of the initiating complaint.

(7) Investigation.

(a) If the board directs that an investigation be completed, the respondent shall be interviewed as a part of that investigation. With the consent of the respondent, a meeting may be scheduled at which time the respondent may respond further to the allegations of the initiating complaint. The board and the respondent shall have the right to be represented at the meeting by legal counsel. The respondent's failure to submit to an interview or cooperate with an investigation shall not deprive the board of the authority to take action pursuant to paragraph (c) of this subsection.

(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 complaint and investigative report. Based on consideration of the complaint; the investigative report, if any; and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act.

1. If it is determined that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of KRS Chapter 319C or 201 KAR Chapter 43, the board shall notify the person or entity making the initiating complaint and the respondent that no further action shall be taken at the present time.

2.a. If it is determined that there is a prima facie violation of KRS Chapter 319C or 201 KAR Chapter 43, the board shall issue a formal complaint against the licensee or applicant.

b. In the case of a prima facie violation of KRS 319C.020(1) and the respondent is not a licensee or an applicant, the board shall take one (1) or all of the following actions:

- (i) Issue a cease and desist order;
- (ii) File suit to enjoin the violator pursuant to KRS 319C.050(2); or
- (iii) Seek criminal prosecution pursuant to KRS 319C.050(2).

(d) If a board member participates in the review of a matter, either as a member of the complaint committee or as the investigator, that person shall not vote according to the process outlined in paragraph (c) of this subsection. However, that person may be counted as a present member for the purposes of establishing and maintaining a quorum of the board.

Section 3. Formal Complaint. If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050.

Section 4. Formal Response. (1) Within twenty (20) days of service of the notice of adminis-

trative hearing, the respondent shall file with the board a written response to the specific allegations set forth in the notice of administrative hearing.

- (2) Allegations not properly responded to shall be deemed admitted.
- (3) The board may, if there is good cause, permit the late filing of a response.

Section 5. Composition of the Hearing Panel. Disciplinary actions shall be heard by a hearing officer and:

- (1) The full board or a quorum of the board;
- (2) A hearing panel consisting of at least one (1) board member appointed by the board; or
- (3) The hearing officer alone in accordance with KRS 13B.030(1).

Section 6. Notification of Complainant. Upon final resolution of a complaint submitted pursuant to this process, the board shall notify the person or entity making the initiating complaint of the outcome of the action in writing. (39 Ky.R. 1965; eff. 5-31-2013.)