

BOARDS AND COMMISSIONS
Board of Durable Medical Equipment Suppliers
(As Amended at ARRS, October 12, 2021)

201 KAR 47:030. Complaint and disciplinary process.

RELATES TO: KRS 309.406, 309.412, 309.414, 309.416, 309.418, 309.420

STATUTORY AUTHORITY: KRS 309.406, 309.418

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.406(1)(d) authorize the board to promulgate administrative regulations governing home medical equipment and service providers. KRS 309.406(1)(d) authorizes the board to investigate complaints or violations of the home medical equipment laws and the administrative regulations. This administrative regulation ***establishes[details]*** the process by which the board investigates complaints and violations.

Section 1. Definitions. (1) "Board" is defined by KRS 309.402.

(2) "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 309.400 through 309.422 or 201 KAR Chapter 47.

(3) "Complaint" means a written complaint alleging a violation of KRS 309.400 through 309.422 and 201 KAR Chapter 47.

(4) "Complainant" means a person who files a complaint pursuant to this administrative regulation.

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

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

(7) "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. ***A certified copy of a court record for a misdemeanor or felony conviction constitutes a valid initiating complaint.***

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

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

Section 2. Initiating Complaint. (1) An initiating complaint may be initiated by the board, an individual, an organization, an entity, or a governmental agency. ***~~[A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating complaint.]~~***

(2) ***An*** initiating ***complaint[complaints]*** shall:

(a) Be in writing;

(b) Clearly identify the individual or entity against whom the initiating complaint is being made;

(c) Contain the date;

(d) Identify the individual or entity making the initiating complaint; and

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

(3) An initiating complaint may be submitted to the board in any manner.

(4) Upon receipt of an initiating complaint, a copy of the initiating complaint shall be mailed to the respondent along with a request for a response to the complaint within twenty (20) days of the date on which the initiating complaint was received, unless an extension is granted by the board upon written request from the respondent and for good cause.

(5) Upon receipt of the written response of the respondent, a copy of the response shall be sent to the complainant. The complainant shall have seven (7) days from receipt to submit a written reply to the response to the board, unless an extension is granted by the board upon written request from the complainant and for good cause.

(6) Complaint Committee.

(a) The complaint committee shall consist of two (2) board members appointed by the chair of the board.

(b) The complaint committee shall [to]:

1. Review initiating complaints, responses, replies, investigative reports, and any other relevant material;

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.]**~~

Section 3. Initial Review. (1) At the next regularly scheduled meeting of the board or as soon thereafter as practicable, the board, upon recommendation of the complaint committee, shall determine the proper disposition of the complaint.

(2) If the board determines before formal investigation that the facts alleged in the initiating complaint do not constitute a prima facie violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall dismiss the complaint and notify the complainant and respondent that no further action shall be taken.

(3) If the board determines that more investigation is warranted, the board shall appoint an agent or representative of the board to investigate the initiating complaint.

(4) If the board determines that there is a prima facie violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall issue a formal complaint against the respondent.

(5) In the case of a prima facie violation of KRS 309.422 and the respondent is not a licensee, the board may take **one (1) or more of** the following actions:

(a) Issue a cease and desist;

(b) File an injunction; and

(c) Seek criminal prosecution pursuant to KRS 309.422.

Section 4. Final Review. (1) 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.

(2) Based on consideration of the complaint **and, if any, the response, reply, investigative report, and other relevant evidence,** ~~**[response, reply, the investigative report, if any, and any other relevant evidence,]**~~ the board shall determine if there has been a prima facie violation of KRS 309.400 through 309.422.

(3) If the board determines that the facts alleged in the initiating complaint do not constitute a violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall dismiss the complaint and notify the complainant and the respondent that no further action shall be taken.

(4) If the board determines that there is a violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall issue a formal complaint against the respondent.

(5) In the case of a violation of KRS 309.422 and the respondent is not a licensee, the board may take **one (1) or more of** the following actions:

- (i) Issue a cease and desist;
- (ii) File an injunction; and
- (iii) Seek criminal prosecution pursuant to KRS 309.422.

Section 5. Settlement by Informal Proceedings. (1) The board, at any time during this process, may enter into informal proceedings with the respondent 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 chair and the respondent.

(3) The board may employ mediation as a method of resolving the matter informally.

(4) The board may, at any time during this process, issue a letter of admonishment to the respondent as a means of resolving the complaint.

1. Within thirty (30) day of the date of the letter, the respondent 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 file.

2.a. The respondent 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.

b. If this appeal is requested, the board shall immediately file a formal complaint in regard to this matter and set a date for hearing.

Section 6. Formal Complaint. (1) If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050.

(2) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations **established[set forth]** in the notice of administrative hearing.

(3) Allegations not **timely[properly]** responded to shall be deemed admitted.

(4) The board **shall upon written request and for[may, if there is]** good cause, **al-low[permit]** the late filing of a response.

Section 7. Composition of the Hearing Panel. Disciplinary actions shall be heard by:

- (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 8. Notification. Upon final resolution of a complaint submitted pursuant to this process, the board shall notify the complainant and the respondent of the outcome of the action in writing, **including any appeal rights pursuant to KRS Chapter 13B.**

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