

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:130. Grievances and administrative complaints.

RELATES TO: KRS 319.005, 319.032, 319.082, 319.118, 319.990

STATUTORY AUTHORITY: KRS 319.032(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for investigating complaints or suspected violations of KRS Chapter 319 and notifying proper law enforcement authorities. KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner, or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a credential holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations of applicable statutes, administrative regulations, and orders of the board. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of administrative complaints asserted against credential holders or applicants for licenses.

Section 1. Definitions.

- (1) "Administrative complaint" means a formal administrative pleading authorized by the board that sets forth charges against a credential holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.
- (2) "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also mean a hearing panel.
- (3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or 201 KAR Chapter 26.
- (4) "Grievance" means any allegation alleging misconduct by a licensed holder or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.
- (5) "Order" means the whole or any part of a final disposition of a hearing.
- (6) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.
- (7) "Respondent" means the person against whom a grievance or administrative complaint has been made.

Section 2. Grievance.

- (1) Source. A grievance may be initiated by:
 - (a) The board;
 - (b) The public; or
 - (c) Any governmental agency.
- (2) Form.
 - (a) A grievance shall:
 1. Be in writing through use of hard copy or digital forms provided by the board;
 2. Clearly identify the licensee against whom the grievance is being made;
 3. Contain the date the grievance is initiated;

4. Clearly identify the complainant through printed name, contact information, and signature;
 5. Contain a clear and concise statement of the facts giving rise to the grievance, including the relationship of the complainant to the licensee;
 6. Indicate if the grievance arises out of a court-involved evaluation, consultation, treatment, or psychoeducation of a person;
 7. Provide consent, or a means of acquiring consent, from the legal guardian for investigations involving minors or adults under guardianship; and
 8. Provide a waiver of confidentiality for the complainant and the complainant's minor children or wards, if applicable.
- (b) A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid grievance.
- (c) The board shall not accept or process anonymous grievances or administrative complaints.
- (3) A grievance shall be filed with the board at its designated office or place of business, or by e-mail.
- (4) Response. The board shall provide a copy of the grievance to the respondent in a timely manner along with additional information and documents supplied by the complainant throughout the administrative process.
- (5) The respondent shall have twenty (20) days to file with the board a written response to the grievance.
- (6) Initial review of the grievance by the complaint screening committee:
- (a) All grievances shall be assigned an identification number and be referred to as such to ensure anonymity.
 - (b) At the next subsequent regularly-scheduled meeting of the board's designated complaint screening committee, or as soon thereafter as practicable, the complaint screening board or a panel committee of the board shall review the grievance and response as well as determine if the matter is within the board's jurisdiction. At that time, and if all necessary information for decision making is available, the complaint screening committee may recommend:
 1. Dismissal of the grievance if the complaint screening committee determines there is no evidence of a violation of law or ethics as provided by the statutes or administrative regulations pertaining to the practice of psychology; if it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the complaint screening committee shall notify the complainant and the respondent that no further action shall be taken at the present time.
 2. Investigation;
 3. Tabling the decision to allow for acquisition of additionally requested information, which may include a fitness for duty evaluation;
 4. Referral of the grievance to the full board for further review and action; or
 5. Issuing a voluntary assurance of compliance to unlicensed individuals whom engage in the practice of psychology.
- (7) Investigation. The board shall provide investigators to explore the ethical and professional conduct of respondents related to the filing of grievances.
- (a) The investigator shall review the factors and variables within the grievance that are pertinent to the practice of psychology and consider the circumstances for which the board's review is required.
 - (b) The respondent shall be contacted by the investigator or board administrator to begin the investigation. With the consent of the respondent, a meeting may be scheduled at which time the respondent may further respond to the allegations of the

grievance. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(c)

1. If the grievance pertains to a minor or any person under legal guardianship as a consumer, collateral, or participant of the investigation, the investigator shall acquire consent from all-involved legal guardians of the minor or ward prior to proceeding with the investigation, unless otherwise ordered by a court of law.

2. If the grievance arises out of a court-involved evaluation, treatment, or psychoeducation of a person whereby the respondent's engagement was affiliated with a legal action, the investigator shall secure information from all involved parties, as well as judicial officers and other involved professionals, concerning the role of the respondent and the purpose and scope of the respondent's court-affiliation. The investigator shall also secure information from opposing parties and other stakeholders in the legal process when assessing the role of the respondent in legal proceedings and how the role is related to the grievance.

3. Investigators shall consider information from multiple data-gathering methods to increase accuracy and objectivity.

4. Investigators shall strive to use a balanced and fair process of investigation through collection of valid collateral source information that demonstrates sufficiency and reliability.

5. In the investigation of the grievance, the investigator shall review all data provided from both the complainant and the respondent as well as answer to all requested information from the board.

6. Investigators shall perform reasonable inquiry when confronted with information about a possible violation of law or ethics; however, the scope of the investigation shall be delineated by grievance.

7. Investigators shall be free from multiple relationships and conflicts of interest prior to acceptance and through completion of the investigation.

8. If the investigator is a member of the board, the investigating member shall not vote on disposition of the grievance.

9. Investigators shall complete the investigation in less than sixty (60) days from the respondent's final interview. If an extension is needed, the investigator shall inform the complaints screening committee of the reason for the extension as well as an estimated date of completion in fourteen (14) day intervals.

(8) Report of investigation. Upon the completion of the investigation, the person or persons making the investigation shall submit a written report to the complaints screening committee containing a succinct statement of the facts disclosed or discovered by the investigation. The investigator shall also acknowledge incomplete, unreliable, or missing data.

(9) After consideration of the grievance and investigative report by the complaint screening committee, the committee may consider the options in paragraph (6)b of this section. If referred to the board, the board shall determine, with the weight it sees fit, if there has been a prima facie violation of KRS 319.082 based on consideration of the:

(a) Grievance;

(b) Response;

(c) Investigative report, if an investigation was warranted; and

(d) Fitness for duty examination, if an examination was warranted

(10) If it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the board shall notify the person making the grievance and the respondent that no further action shall be taken at the present time.

(11) If it is determined that there is a prima facie violation, the board shall:

(a) Issue an administrative complaint against the credential holder or applicant;

- (b) File suit to enjoin the violator; or
- (c) Seek criminal prosecution pursuant to KRS 319.990.

Section 3. Administrative Complaint. If the board determines that the grievance shall be made an administrative complaint, the administrative complaint shall be adjudicated pursuant to KRS Chapter 13B.

Section 4. Administrative Response. Within twenty (20) days of service of the formal administrative complaint, the respondent shall file with the board a written response to the specific allegations set forth in the administrative complaint. Allegations not properly responded to shall be deemed admitted, and may form the basis for a default adjudication against the respondent subject to the administrative complaint if the requisite elements of a violation are admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a License Holder.

- (1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism for identification adopted by the board.
- (2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.
- (3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.
- (4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session.

Section 6. Fitness for Duty Examination.

- (1) If there is reasonable cause to believe that a credential holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the credential holder or applicant to submit to an examination by a psychologist or other health care provider designated by the board to determine the credential holder's or applicant's fitness and competence to practice psychology.
- (2) The expense of this examination shall be borne by the board.
- (3) The board shall then consider the findings and conclusion of the examination.
- (4) The board shall provide a copy of the examination to the respondent. The respondent may file with the board a written response to the examination within fifteen (15) days of the date on which the findings and conclusion of the examination was provided to the respondent.
- (5)
 - (a) Based on consideration of the psychological or physical examination, the board shall determine if there has been a prima facie violation of KRS 319.082.
 - (b) If it is determined that the findings and conclusion of the examination do not constitute a prima facie violation of KRS 319.082, the board shall notify the respondent and complainant, if any.
 - (c) If it is determined that there is a prima facie violation of KRS 319.082, the board shall issue an administrative complaint against the credential holder or applicant.

Section 7. Board Member Training for Cases of Sexual Misconduct.

- (1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).
- (2) An investigator shall not be assigned to cases where sexual misconduct has been alleged until the required training has been completed.

(3) Training shall consist of a three (3) hour course that includes the content specified by KRS 319.032(1)(e) and may be delivered by means of either live presentation, individual tutorial, or electronic media.

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.