

BOARDS AND COMMISSIONS
Board of Licensure for Massage Therapy
(Amendment)

201 KAR 42:050. Complaint procedure and disciplinary action.

RELATES TO: KRS 309.351, 309.355(1), (2), (6), 309.362

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board to regulate the practice of massage therapy. KRS 309.355(2) requires the board to investigate every alleged violation and take appropriate action. This administrative regulation establishes the procedure for filing a complaint and the action to be taken by the board on a complaint and disciplinary action of a licensee or applicant in violation of KRS 309.351 or 309.362.

Section 1. Definitions.

(1) "Complaint committee" means a committee of the board that:

(a) Reviews an initiating complaint; and

(b)

1. Recommends dismissal or further investigation of the complaint; or

2. Determines the existence of sufficient evidence to bring a formal complaint.

(2) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge against a licensee or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.

(3) "Initiating complaint" means a written complaint alleging a violation of KRS 309.350 through 309.364.

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

Section 2. Initiating Complaint.

(1) A complaint may be initiated by:

(a) An individual;

(b) A state or government agency;

(c) Another member of the massage therapy profession; or

(d) The board.

(2) An initiating complaint shall be made in writing to the board and received in the board office.

(3) The board may conduct an investigation on its own initiative, without receipt of a complaint, if the board has reason to believe that there may be a violation of KRS 309.350 through 309.364, or 201 KAR Chapter 42.

(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid reason for an initiating complaint.~~[The complaint shall be submitted on a Form to File a Complaint or Unlicensed Activity Report.]~~

(5) Any complaint shall be in writing, identify the complainant, including name and contact information, and contain specific details regarding the complaint. Complaints without the required information will not be processed.

Section 3. Procedure Upon Receipt of Initiating Complaint.

(1) Upon receipt of the initiating complaint, the board office shall send a copy of the initiating complaint to the respondent at the respondent's last address of record with the board.

(2) The respondent shall file a response to the initiating complaint with the board within twenty (20) days after the board mails the initiating complaint to the respondent.

(3) The allegations in an initiating complaint shall be considered true if the respondent fails to respond to the initiating complaint in a timely fashion. [

~~[(4)] [The board shall use the procedures established in this subsection to redact an initiating complaint.]~~

~~[(a)] [A copy of an initiating complaint may be redacted of personal names, personal identification numbers, and personal contact information upon recommendation of the complaint committee and consent by majority vote of the full board. The board shall keep the original initiating complaint free of redactions and store the document in the complaint case file.]~~

~~[(b)] [The board may send a redacted copy of an initiating complaint to the respondent to meet the requirements of subsection (1) of this section. The original initiating complaint that is free of redactions may be viewed by the respondent upon written request submitted to the board. The original copy of the initiating complaint that is free of redactions shall not be released to the respondent or the public until final disposition of the matter.]~~

Section 4.

(1) The complaint committee shall:

(a) Review the initiating complaint and the response filed by the respondent at its next meeting; and

(b) Recommend one (1) of the following options to the board at the board's next meeting:

1. Dismissal;
2. Further investigation;
3. Issuance of a formal complaint; or
4. Referral to another government agency.

(2) A complaint committee member having any known conflict of interest shall be recused from the matter and disclose the existence of the conflict in a regular board meeting.

Section 5. Board Action upon Recommendation of Complaint Committee. At the board's next meeting following review by the complaint committee, the board shall review the committee's recommendations and shall accept or reject the recommendations in whole or in part.

Section 6. Dismissals. The complainant and respondent shall be notified if a case is dismissed.

Section 7. Investigations.

(1) If investigation is warranted, the board shall appoint one (1) of its members or an agent or representative of the board to conduct an investigation of the complaint.

(2) In its investigation, the board may be assisted by:

- (a) Board staff;
- (b) A board agent; or
- (c) The Office of the Attorney General.

Section 8. Formal complaints. If the board finds that sufficient evidence exists to file a formal complaint, the board shall:

- (1) Resolve the case informally by agreed order; or
- (2) File a formal complaint, in accordance with KRS Chapter 13B.

Section 9. Settlement by Informal Proceedings.

(1) The board, through counsel, may enter into informal discussions or negotiations with the respondent for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through informal proceedings shall be approved by the board and signed by the chair of the board, the respondent, and the respondent's attorney. A copy shall be placed in the licensee's file and a copy shall be mailed to the complainant.

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

Section 10. Procedures for Disciplinary Hearings.

(1) All procedures for disciplinary hearings shall conform to KRS Chapter 13B.

(2) Testimony to be considered by the board, hearing panel, or hearing officer, if any, may be taken by deposition. A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and a showing that other parties shall have an opportunity to cross-examine at the deposition. The presiding officer or hearing officer, if any, shall rule upon motions to allow testimony to be considered by deposition, subject to review and approval by the board.

(3) The presiding officer or hearing officer, if any, may order that at least five (5) days prior to the hearing, each party shall file a summary of each witness' expected testimony.

(4) The board may request recovery of administrative costs and fees incurred by the board in processing, investigating, or administering a complaint to be paid by a respondent. The request shall be submitted by motion to an administrative hearing officer assigned under KRS 13B.080 to preside over a KRS Chapter 13B hearing of the complaint. The request may also be made to a circuit court judge presiding over an action for injunction filed by the board pursuant to KRS 309.355(6).

Section 11. Final Disposition. Upon reaching a decision, the board shall notify the respondent in writing, by certified mail or personal service, of its final disposition of the matter and the complainant shall be notified by regular mail.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Form to File a Complaint", June 2021~~[January 2011]~~; and

(b) "Unlicensed Activity Report", June 2021~~[January 2011]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, Kentucky 40601.~~[Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, Monday through Friday, 8:00 a.m. to 4:30 p.m.]~~ The board's Web site address is: <https://bmt.ky.gov/>.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, 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: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email LBoggs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets forth the procedure for filing a complaint or unlicensed activity report, how the complaint will be handled, and how discipline will be imposed.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to update and clarify how to file a complaint or an unlicensed activity report, and how they will be processed.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The proposed regulation updates and clarifies how to file a complaint or unlicensed activity report and they will be processed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

See (1)(d).

(b) The necessity of the amendment to this administrative regulation:

See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes:

See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes:

See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation will affect the 2,665 individuals licensed by the Board and those individuals who are practicing without a license.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

None. It only simplifies and clarifies the process for filing a complaint or unlicensed activity report, how they will be handled, and how discipline will be imposed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

None. It only simplifies and clarifies the process for filing a complaint or unlicensed activity report, how they will be handled, and how discipline will be imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

It will assist the general public and other entities in filing complaints and unlicensed activity reports against licensees.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

None.

(b) On a continuing basis:

None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

There is no cost to the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Board of Licensure for Massage Therapy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 309.355(1), 309.355(3)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation. (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No answer provided.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None.

(c) How much will it cost to administer this program for the first year?

There are no additional costs.

(d) How much will it cost to administer this program for subsequent years?

See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: