

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amendment)

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 three (3)~~[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 out lined 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 administrative 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.

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does:

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.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 319C.060(2).

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

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.

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

This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

(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:

The amendment removes the requirement that a board member participating in the review of a matter is prohibited from voting on the matter.

(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 11 licensed assistant behavior analysts, 482 licensed behavior analysts, 6 temporary behavior analysts, and 6 temporary registered telehealth providers. (4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: No action required. (b) In complying with this administrative regulation

or amendment, how much will it cost each of the entities: None. (c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow licensees to have an updated understanding of the complaint review process.

(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:

No answer provided.

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

No answer provided.

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

No answer provided.

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

(a) Initially:

This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis:

This administrative regulation does not create a cost for the administrative body

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

The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for 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 increases in fees or funding is necessary to implement the amendment to this administrative regulation.

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

None.

(9) TIERING: Is tiering applied?

Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

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?

This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

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

KRS 319C.060(2).

(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.

(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?

None

(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: