

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(Amendment)

201 KAR 36:050. Complaint management process.

RELATES TO: KRS 335.540, 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (7), 45 C.F.R. 164.512(a), (d), (e).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the procedures for filing, investigating, and addressing a complaint filed against a professional counselor.

Section 1. Receipt of Complaints.

(1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity;

(b) Shall be:

1. In writing and provided on the Complaint Form, DPL-LPC-12; and
2. Signed by the person submitting the complaint; and

(c) May be filed by the board based upon information in its possession.

(2)

(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint.

(b) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(3)

(a) Upon receipt of the written response of the individual named in the complaint, a copy of his or her response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 2. Initial Review.

(1) After the receipt of a complaint and the expiration of the period for the individual's response or reply, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available, and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

- (a) Dismiss the complaint; and
- (b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

- (a) Authorize an investigation into the matter; and
- (b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 3. Results of Formal Investigation; Board Decision on Hearing.

(1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee

shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint or take action pursuant to KRS 335.540(3); and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint, which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the individual as required by KRS Chapter 13B.

(4) If the board determines that a person may be in violation, it shall:

(a) Order the individual to cease and desist from further violations of KRS 335.505;

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS 335.599; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.505.

Section 4. Settlement by Informal Proceedings.

(1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint 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 individual who is the subject of the complaint and the chair.

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

Section 5.

(1) If the complaint screening committee determines that a violation has occurred but is not serious, the complaint screening committee may recommend the issuance of a private written ~~admonishment~~~~[reprimand]~~ to the board. If the board accepts the recommendation, the board shall issue a private written ~~admonishment~~~~[reprimand]~~ to the credential holder.

(2) A copy of the private written ~~admonishment~~~~[reprimand]~~ shall be placed in the permanent file of the credential holder.

(3) A private written ~~admonishment~~~~[reprimand]~~ shall not:

(a) Be subject to disclosure to the public under KRS 61.878(1)(1); or

(b) Constitute disciplinary action.

(4) A private written ~~admonishment~~~~[reprimand]~~ may be used by the board for statistical purposes or in any subsequent disciplinary action against the credential holder or applicant.

Section 6. If the board determines that there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable of practicing professional counseling with reasonable skill and safety to clients, the board may order the license holder or applicant to submit to an examination by a mental health professional or a physician designated by the board to determine the license holder's or applicant's mental health or physical status to practice professional counseling.

Section 7. Notice and Service Process. A notice required by KRS 335.500 to 335.599 or this administrative regulation shall be issued pursuant to KRS Chapter 13B and 201 KAR 36:090.

Section 8. Notification. The board shall make public:

- (1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written admonishment issued pursuant to KRS 335.540(3); and
- (2) An action to restrain or enjoin a violation of KRS 335.505. 201 KAR 36:050.

Section 9. If your complaint relates to services provided to you by a licensee, the board or its authorized representative may contact you and request that you sign an authorization for release of medical and client records. This involves health oversight activities and administrative proceedings of the board and disclosure is permitted under 45 C.F.R. Section 164.512(a), (d), and (e), the regulations implementing the Health Insurance Portability and Accountability Act (HIPAA).

Section 10. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Complaint Form with Information Sheet", DPL-LPC-11, August 2024; and [DPL-LPC-12, July 2023, is incorporated by reference.]
 - (b) "Authorization for Release of Medical and Client Records", DPL-LPC-12, August 2024.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m., Monday through Friday. This material is also available on the board's Web site at lpc.ky.gov.

ANDREA BROOKS, Chair

APPROVED BY AGENCY: October 7, 2024

FILED WITH LRC: October 11, 2024 at 1:04 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, December 27, 2024, at 1:00 p.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Agency: Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709 (office), fax (502) 564-4818, email Sara.Janes@ky.gov; Link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the complaint and administrative hearing process to address alleged violations brought before the board.

(b) The necessity of this administrative regulation:

The necessity of this regulation is to establish a complaint and administrative hearing process to address alleged violations brought before the board.

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

The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for the administrative hearing process to address alleged violations brought before the board.

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

This regulation will assist in establishing the complaint, investigation, and administrative hearing process of alleged violations brought before the board.

(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 will amend language Section 5 relating to use of the term "private reprimand" for non-serious statutory or regulatory offenses to usage of the term "private admonishment" which is consistent with KRS 335.540(3). KRS 335.545 provides that a hearing is required before imposing a written reprimand. Therefore, this amendment will bring the regulation into compliance with the authorizing statutes. Additionally, this amendment will include instructions with the Complaint Form and correct the form number in the material incorporated by reference. Finally, a new section advising complainants a release of medical records may be necessary under HIPAA and a new medical release form is included in the material incorporated by reference.

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

These amendments are necessary to bring the regulation into compliance with the KRS 335.540 and 335.545. Additionally, this amendment will provide complainants with instructions about the complaint management process to alleviate questions about the process expressed by complainants and make the process more efficient, correct the form number listed in the MIR, and include information and a form for a HIPAA release of medical records.

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

The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements discipline and investigation by the board

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

The amendment will assist in effective administration by clarifying the disciplinary options available for board sanctions; and will help complainants understand the

complexities of filing a complaint and what to expect, including the potential need for a HIPAA release.

(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 4564 active and 61 inactive licensees in some capacity, and will also affect new applicants for licensure.

(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:

A licensee will have to take no additional action to comply with the amendments if a disciplinary action ensues against the licensee.

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

There is no new cost associated to the amendments.

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

The amendment will clarify the disciplinary options and allow the board to issue a private admonishment that will not be considered disciplinary in nature.

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

(a) Initially:

It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis:

It will not cost the administrative body any additional funds to implement this administrative regulation.

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

The board's operations are funded by fees paid by credential holders and applicants.

(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 increase in fees or funding is necessary to implement this administrative regulation change.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL IMPACT STATEMENT

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

KRS 335.515(3), KRS 211.332, KRS 211.334, KRS 211.335, and KRS 211.336.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

Kentucky Board of Licensed Professional Counselors.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There will be no difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

None anticipated.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There will be no difference in expenditures, revenues or cost savings to local entities in subsequent years

(4) Identify additional regulated entities not listed in questions (2) or (3):

There are no other regulated entities not otherwise listed.

(a) Estimate the following for the first year:

Expenditures:N/A

Revenues:N/A

Cost Savings:N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

There is no anticipated fiscal impact to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact:

Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

. This administrative regulation will not have an overall negative or adverse major economic impact to the entities identified.

(b) The methodology and resources used to reach this conclusion:

Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

45 C.F.R. Section 164.512(a), (d), and (e), the regulations implementing the Health Insurance Portability Accountability Act (HIPAA).

(2) State compliance standards.

The state complies with HIPAA standards.

(3) Minimum or uniform standards contained in the federal mandate.

The board may be required to request medical records for an investigation which are health oversight activities and administrative proceedings of the board and disclosure is permitted under 45 C.F.R. Section 164.512(a), (d), and (e), the regulations implementing the Health Insurance Portability Accountability Act (HIPAA).

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

There is no stricter standard being imposed, nor additional or different responsibilities or requirements.