

BOARDS AND COMMISSIONS

Board of Respiratory Care (Amendment)

201 KAR 29:030. Complaint processing procedures.

RELATES TO: KRS 314A.225

STATUTORY AUTHORITY: KRS 314A.205(3)

CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with the requirements of 2025 RS HB 6, Section 8, because the amendments to this administrative regulation will not have a major economic impact.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314A.205(1) requires the board to investigate persons engaging in practices which violate the provisions of KRS Chapter 314A. This administrative regulation establishes the detailed procedures for the investigation and disposition of complaints received by the board.

Section 1. Definitions.

- (1) "Chairperson" means the presiding official of the board, or the presiding official's designee when the chairperson is absent or has recused themselves from consideration of a specific matter.
- (2) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 314A or 201 KAR Chapter 29.
- (3) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings following the issuance of a notice of hearing and statement of charges pursuant to KRS 13B.050.

Section 2. Reception of Complaints; Investigations.

- (1) A complaint may be submitted by an individual, organization, or entity. A complaint shall be in writing, signed by the person offering the complaint unless submitted anonymously, and shall allege acts that may be in violation of the provisions of KRS Chapter 314A or 201 KAR Chapter 29 by the named certificate holder, applicant, or unlicensed individual against whom the complaint was made.
- (2) If the board receives an anonymous complaint, an investigation shall be conducted if the complaint is accompanied by sufficient corroborating evidence, or if such evidence is readily available, as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.
- (3) The chairperson of the board, the executive director or designee shall file an agency-initiated complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are found to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 314A or 201 KAR Chapter 29.
- (4) With the exception of a self-report or an application that discloses a violation of KRS Chapter 314A or 201 KAR Chapter 29, a copy of the complaint shall be sent to the individual named in the complaint by both regular mail and email to the mailing address and email address of record pursuant to 201 KAR 29:020 §2(15), along with a request for that individual's written, legible, verified response to the complaint within thirty (30) days of the issuance of the complaint.
- (5) The failure, without good cause, of any certificate holder or applicant to file a written, legible, verified response when due shall be considered a violation of 201 KAR 29:020 §2(5) and an admission of the allegations stated in the complaint.
- (6) The executive director or designee shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations.
- (7) Each complaint shall be investigated as necessary and as promptly as possible, and presented to the board for review and a finding of probable cause or no probable cause to

believe a violation of KRS Chapter 314A or 201 KAR Chapter 29 has occurred. A probable cause finding or no probable cause finding shall be determined on a majority vote of a quorum of the board, and shall be recorded in the board meeting minutes.

(8) The executive director shall further be empowered to order the attendance of any certificate holder or applicant at an investigative meeting regarding any complaint.

(9) The failure, without good cause, of any certificate holder or applicant to attend an investigative meeting when requested shall be considered a violation of 201 KAR 29:020 §2(5).

(10) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except during the board review of the case information in closed session when making a finding of probable cause or no probable cause.

(11) If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the probable cause finding or the deliberations or decision-making conducted pursuant to KRS 13B.120.

(12) If the board determines that there is no probable cause to believe a violation of KRS Chapter 314A or 201 KAR Chapter 29 has occurred, there shall not be further action unless warranted by further evidence, and the board shall notify both the complaining party and the individual of the no probable cause finding.

(13) Upon a board determination that there is probable cause to believe a violation of KRS Chapter 314A or 201 KAR Chapter 29 by a certificate holder or applicant has occurred, board staff may issue a notice of hearing and statement of charges pursuant to KRS 13B.050, a proposed agreed order pursuant to Section 3 of this administrative regulation, or both.

(14) Upon a board determination that there is probable cause to believe a violation of KRS Chapter 314A or 201 KAR Chapter 29 by a person who has never been a certificate holder in Kentucky, or if their Kentucky credential has been suspended or revoked, Board staff shall cause a referral report to be prepared and signed by the chairperson of the board, stating the basis for the board determination. If the individual has never been licensed or certified to practice as a respiratory care practitioner in another state, the referral report shall be forwarded to the county attorney of the county of residence of the person allegedly practicing respiratory care without appropriate certification with a request that appropriate action be taken under KRS 314A.990. If the individual has held a license or certificate to practice as a respiratory care practitioner in another state, the referral report shall be forwarded to each state agency who issued a license or certificate to the individual, and to the National Board for Respiratory Care or its equivalent. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of respiratory care.

Section 3. Negotiated Resolution; Letter of Admonishment.

(1) At any time subsequent to the issuance of a complaint to a certificate holder or applicant, or a notice of noncompliance pursuant to Section 5 of this administrative regulation, the executive director or designee shall have the authority and the complete discretion to negotiate with the certificate holder or applicant concerning stipulations of fact, conclusions of law, and proposed discipline. The executive director shall also have discretion to reject any or all offers of negotiated resolution and may commence negotiations on the executive director's initiative.

(2) When negotiated settlement terms have been accepted by the certificate holder or applicant, and the executive director or designee subject to the approval the board, the executive director or designee shall cause the settlement agreement, signed by the certificate holder or applicant, to be submitted to the board, including a line for the

signature of an officer of the board. A settlement agreement shall become effective upon being accepted by a majority of a quorum of the board, signed by the chairperson, and filed of record.

(3) If the board rejects a negotiated resolution that has been signed by the certificate holder or applicant, the matter shall continue to proceed, provided, however, that further negotiations may be conducted and subsequent settlement offers may be presented to the board. Rejection shall not be taken as a finding or determination of any kind on behalf of the board and no orders or other pleadings shall be filed of record in regard to the negotiations or the rejected proposal.

(4) Upon a finding of probable cause to believe a violation of KRS Chapter 314A or 201 KAR Chapter 29 by a certificate holder or applicant has occurred, the board may direct the issuance of a letter of admonishment to the certificate holder or applicant. This action may be taken if it is determined by the board that this is an appropriate method of dispensing with the complaint. The letter of admonishment shall be signed by the executive director and sent to the individual by both regular mail and email to the mailing address and email address of record pursuant to 201 KAR 29:020 §2(15), with a copy placed in the individual's permanent file. Within thirty (30) days of the date of the letter, the individual 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 permanent file. The individual shall also have, within thirty (30) days of the date of the letter, the right to contest the letter of admonishment and be granted a full hearing on the complaint pursuant to KRS Chapter 13B. If a hearing is requested, the board shall file a notice of hearing and statement of charges and shall proceed in accordance with Section 4 of this administrative regulation.

Section 4. Disciplinary Proceedings.

(1) Disciplinary proceedings following the filing of a notice of hearing and statement of charges pursuant to KRS 13B.050 shall be heard by a hearing officer, who shall be an assistant attorney general or an attorney appointed by the board in accordance with KRS 13B.030 and 13B.040.

(2) The certificate holder or applicant shall file with the board a written answer to the specific allegations contained in the notice of hearing and statement of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer shall be considered a violation of 201 KAR 29:020 §2(5) and may result in the issuance of a default order pursuant to KRS 13B.080(6). The hearing officer shall for good cause permit the late filing of an answer.

(3) The board prosecuting attorney shall be empowered to direct the attendance of any certificate holder or applicant at an administrative hearing conducted pursuant to KRS 13B.080.

(4) The failure, without good cause, of any certificate holder or applicant to attend an administrative hearing when directed to do so shall be considered a violation of 201 KAR 29:020 §2(5).

(5) The hearing shall be transcribed by a court stenographer or video recorded.

(6) In a final order is issued by the board in accordance with KRS 13B.120, or in an agreed order issued subsequent to the filing of a notice of hearing and statement of charges pursuant to KRS 13B.050, the board may impose the following as a component of the administrative fine authorized by KRS 314A.225(1) and 314A.990, provided the total fine does not \$1,000:

- (a) The cost of stenographic services;
- (b) The cost of the hearing officer;
- (c) Expert witness costs, including travel;
- (d) Travel for other witnesses, at the rates specified at 200 KAR 2:006 Sections 5-7;

- (e) Document reproduction costs; and
- (f) The cost of a certified copy of laboratory testing records.

Section 5. Noncompliance with Final Order or Agreed Order Terms.

- (1) The executive director or designee may investigate as needed, using any of the methods available in Section 1 of this administrative regulation, to monitor an individual's compliance with the terms of an agreed order or a final order entered by the board pursuant to KRS Chapter 13B.120.
- (2) A written notice of noncompliance shall be sent by the board or the executive director or designee to any individual who has violated the terms of an agreed order or a final order pursuant to KRS Chapter 13B.120. The notice shall specify the noncompliance, the sanctions sought by board staff, and any other remedial action sought as a consequence of the individual's noncompliance.
- (3) The individual to whom the notice of noncompliance is sent shall file with the board, within thirty (30) days of issuance of the notice, a written, legible, verified response.
- (4) The failure, without good cause, to file a written, legible, verified response when due shall be considered a violation of 201 KAR 29:020 §2(5), an admission of noncompliance, acceptance of the sanctions and remedial actions stated in the notice of noncompliance. If the notice of noncompliance arises from an agreed order that includes a liquidated sanction for noncompliance and a corresponding waiver of the right to hearing with regard to enforcement of the agreed order, including a waiver of the right to be present with counsel, to subpoena witnesses and to confront witnesses, and the full panoply of rights of hearing and appeal, the liquidated sanction specified in the agreed order may be implemented without the necessity of a hearing pursuant to KRS Chapter 13B, and without the associated due process procedures. The board or the executive director shall give notice of the imposition of the liquidated sanctions specified in the agreed order by delivering written notice of the final disposition and the remedial actions imposed to the individual by both regular mail and email to the mailing address and email address of record pursuant to 201 KAR 29:020 §2(15), or the individual's attorney of record.
- (5) Upon the receipt of a written, legible, verified response to a notice of noncompliance, the board shall file a notice of hearing and statement of charges pursuant to KRS 13B.050 and shall proceed in accordance with KRS Chapter 13B and Section 4 of this administrative regulation. The executive director shall be authorized to sign a notice of hearing and statement of charges arising from noncompliance with an agreed order or final order pursuant to KRS Chapter 13B.120.

Section 6. Notice and Service of Process. Except for those items that are required to be delivered by certified mail pursuant to KRS 13B.050(2) and 13B.120(5), any notice required by KRS Chapter 314A or this administrative regulation shall be delivered by both regular mail and email to the mailing address and email address of record pursuant to 201 KAR 29:020 §2(15).

MARLENE MCKINLEY, RRT, Board Chair

APPROVED BY AGENCY: April 17, 2025

FILED WITH LRC: August 15, 2025 at 9:45 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2025 at 10:00 a.m. at the Kentucky Board of Respiratory Care, 1712 Perryville Rd, Suite 200, Danville, Kentucky 40422. Individuals interested in being heard at this hearing shall notify this agency in writing by October 21, 2025, five 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 October 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Morgan G. Ransdell, Board Attorney, Kentucky Board of Respiratory Care, 1712 Perryville Rd, Suite 200, Danville, Kentucky 40422; phone (502) 665-9600, email Morgan.Ransdell@ky.gov.