BOARDS AND COMMISSIONS
Board of Physical Therapy
(Amended at ARRS Committee)

201 KAR 22:052. Complaint procedure and disciplinary action of a credential holder or applicant.

RELATES TO: KRS 327.020, 327.040, 327.070
STATUTORY AUTHORITY: KRS 327.040 (1), (2), [(11),(14)](13)
CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with the requirements of 2025 RS HB 6, Section 8.
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(1)[,(2)][(11)] authorizes the board to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(13)[(14)] authorizes promulgation of administrative regulations governing the physical and mental examination of credential holders or applicants who may be impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently. KRS 327.040(2) authorizes the board to investigate every alleged violation and take action, as appropriate. This administrative regulation is necessary to establish the procedure for filing a complaint and the action to be taken by the board on a complaint and disciplinary action against a credential holder or applicant in violation of KRS 327.020.

Section 1. Definitions.
(1) "Complaint committee" means a committee of the board that:
(a) Reviews an initiating complaint;
(b) Determines whether an investigation should be conducted; and
(c) Directs and reviews an investigation of the respondent.
(2) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge against a credential holder or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.
(3) "Initiating complaint" means any complaint that a person has allegedly violated the requirements of KRS Chapter 327 or the administrative regulations of the board.
(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) A member of the public;
(b) *A* [*or*] government agency; or
(c) The board.
(2) An initiating complaint shall:
(a) Be made in writing to the board and signed by the complainant unless the nature of the initiating complaint alleges an immediate danger to the health, safety and welfare of the public; and
(b) Bear the date of the complaint.
(3) The board may, at any time, conduct an investigation on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of KRS Chapter 327 or the administrative regulations of the board.
(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid initiating complaint.
(5) An initiating complaint may be received by:
(a) A board member;
(b) The Office of the Attorney General; or

(c) A staff member.

Section 3. Consideration of Initiating Complaint.

(1) Review of an initiating complaint shall take place:

(a) At the next regularly-scheduled meeting of the complaint committee; or

(b) As soon as practicable.

(2) The complaint committee:

(a) Shall:

1. Review the initiating complaint;

2. Determine if an investigation is warranted; and

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

(b) May be assisted by:

1. Board staff;

2. A board agent; or

3. The Office of the Attorney General.

(3) If there is reasonable cause to believe that a credential holder or applicant may be physically or mentally incapable of practicing physical therapy or is a danger to the public~~[with reasonable skill and safety to clients]~~:

(a) The Executive Director, General Counsel, Board Chair, and Director of the IPTPC or their appointed designee, may determine that immediate temporary suspension of a license or privilege is necessary in order to stop, prevent, or avoid immediate danger to the public health, safety, or welfare. When it appears that this action may be necessary, the Executive Director or the Executive Director's designee shall issue an Immediate Temporary Suspension (ITS), suspending the license or privilege. Upon appeal of an ITS, an emergency hearing shall be conducted in accordance with KRS 13B.125.

(b) The board may order the credential holder or applicant to submit to an examination by a psychologist, physician, or certified alcohol and drug counselor designated by the board to determine the credential holder's or applicant's psychological or physical status to practice physical therapy.

(c) ~~[(b)]~~ The expense of this examination may be incurred by the board.

(d) ~~[(c)]~~ The board shall then consider the findings and conclusion of the examination and the final investigative report at its next regularly-scheduled meeting or soon thereafter.

(4) Notice to respondent.

(a) The board shall notify the respondent of the receipt of the initiating complaint and the essential contents of the initiating complaint. The board may keep the complainant's name confidential until completion of any board investigation.

(b) Respondent shall file a reply to the initiating complaint with the board within twenty (20) days after receipt of notice of the initiating complaint.

(c) Failure of the respondent to file a timely reply to the initiating complaint shall constitute a violation of a board order or administrative regulation and shall be grounds for disciplinary action under KRS 327.070(2)(k).

(5) If the Board office receives an allegation of sexual misconduct against a physical therapist or physical therapist assistant, the following shall apply:

(a) Upon receipt, the complaint shall be reviewed, and an investigation may be opened by the Executive Director and General Counsel;

(b) The complaint shall also be reviewed by the Board at the next regularly-scheduled meeting or a Special Meeting of the Board;

(c) The Respondent shall file a reply to the initiating complaint with the Board within ten (10) days after receipt of notice of the initiating complaint;

(d) The investigation shall be conducted in an expedited manner as determined by the Executive Director;

(e) If the Board determines there was a violation by a preponderance of the evidence, the Board shall begin the hearing process outlined under KRS Chapter ***13B*** ***[b]*** utilizing a hearing officer of its choice to expedite the process; and

(f) The Board, staff and agents shall utilize a trauma informed approach when conducting sexual misconduct investigations.

(6) ~~[(5)]~~ Based on consideration of the initiating complaint and the investigative report, the board shall determine if there has been a prima facie violation upon summary and recommendation by the complaint committee. The members of the complaint committee shall not vote on this determination.

(7) ~~[(6)]~~ If it is determined that the facts alleged constitute a prima facie violation, the board:

(a)

1. Shall issue a formal complaint, in accordance with KRS Chapter 13B, against the credential holder or applicant; and
2. May order that a written response be filed with the board; or

(b) If it is determined that there is a prima facie violation of KRS 327.020, shall proceed under KRS 327.040(2).

Section 4. 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*** ~~***[said]***~~ deposition. The presiding officer or hearing officer, if any, shall rule upon motions to allow testimony to be considered by deposition. Other depositions shall not be allowed.

(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 impose fines on individuals for violations of KRS Chapter 327 not to exceed $5,000 per violation under KRS Chapter ***327.072*** ~~***[327:070]***~~ ~~***[Section 11]***~~ .

(5) The Board may also impose on ***individuals*** ~~***[individual,]***~~ fees in an amount equal to the cost of investigative and legal fees incurred by the board in processing the case.

Section 5. Final Disposition.

(1) Upon reaching a decision, the board shall notify, in writing by certified mail, the complainant and respondent of its final disposition of the matter.

(2) The board shall make public:

(a) Its final order in a disciplinary action under KRS 327.070(1)(a)-(e) ~~***[and (g)]***~~.

(b) An action to restrain or enjoin the noncredentialed practice of physical therapy.

Section 6. Settlement by Informal Proceedings.

(1) The board through counsel and the complaint 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***, signed by the chairman,*** and signed by the individual who is the subject of the complaint ~~***[and the chairman]***~~.

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

Section 7. Expungement of Disciplinary Actions. The Board may expunge minor violations of KRS Chapter 327 after ***five (5)*** ~~***[5]***~~ years of a licensee or applicant who is in good standing with the Board. Each expungement applicant ***shall*** ~~***[will]***~~ be reviewed on a case-

by-case basis, and it is left to the discretion of the Board to determine which applicants qualify for expungement.

(1) Any applicant requesting expungement ***shall*** ~~***[must]***~~ file an application for expungement with the Board office;

(a) At the next regularly-scheduled meeting of the Board; or

(b) As soon as practicable.

(2) Licensees ***shall*** ~~***[must]***~~ have the following to be eligible for consideration of expungement:

(a) ***Five (5)*** ~~***[5]***~~ years ***shall*** ~~***[must]***~~ have passed since the final resolution of the disciplinary action, which includes completion of any required terms and probation of any Agreements or Orders;

(b) No subsequent violations, disciplinary actions , or is not currently under investigation during this period; and

(c) The license is currently in good standing.

(3) The Board shall respond in writing of their determination.

(4) The applicant may appeal the decision of the Board if they have additional information for consideration.

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