

## **201 KAR 21:051. Board hearings.**

RELATES TO: KRS 312.150, 312.160, 312.163

STATUTORY AUTHORITY: KRS 312.019(5), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.109(5) authorizes the board to enforce and investigate violations. KRS 312.019(9) authorizes the board to promulgate administrative regulations consistent with KRS Chapter 312, governing the practice of chiropractic. KRS 312.150 authorizes disciplinary action to be taken against a licensee. KRS 312.160 requires a right to an appeal for a licensed person disciplined after a hearing. This administrative regulation establishes procedural guidelines for board hearings and the processing of complaints against a licensee.

### **Section 1. Complaints and Investigations.**

(1) A complaint may be made by any person, organization, or entity. A complaint made by a person, organization, or entity shall be in writing and shall be signed by the person offering the complaint. The complaint shall contain:

(a) The name, phone number, and address of the person making the charge and the name and address of the place of business of the person or persons against whom charges are made; and

(b) A clear and concise description of the issues of fact.

(2) Upon receipt of a complaint against a licensee, the board shall send a copy of the complaint to the licensee for a response.

(a) The complaint shall be sent to the last known address of the licensee that the board has on file. Proof of mailing of the complaint to the licensee's last address on file shall constitute proof of service of the complaint.

(b) The licensee shall file a response within twenty (20) days from the date of the board's letter.

(c) The board shall review the complaint and the licensee's response before it determines if the nature and quality of the charges warrant dismissal, further investigation, or the initiation of a hearing.

(d) In making its determination, the board shall consider if the charges if proven would warrant sanction by the board.

(e) If the licensee fails to file a response within twenty (20) days of service of the complaint, the board may, based on lack of good cause, treat such failure as a default by the licensee, which in this case shall be equivalent to a finding that the factual allegations of the complaint may be taken as true. The board shall also have the authority to grant extensions of time for filing of a response based on the reason.

(3) The board may proceed against a licensee on its own initiative either on the basis of information contained in its own records or on the basis of information obtained through its own investigation.

(4) The filing of formal charges shall require the affirmative vote of a majority of the board.

(5)

(a) If the board finds that allegations against a licensee are insufficient for initiation of a formal disciplinary procedure, it shall dismiss the matter and notify all interested parties.

(b) If the board determines that disciplinary proceedings are appropriate, the board shall issue a notice of disciplinary action and inform the licensee of the specific reason for the board's action, including the:

1. Statutory or regulatory violation;
2. Factual basis on which the disciplinary action is based; and
3. Penalty to be imposed.

(c) The licensee, or the complainant may appeal the disciplinary action established in the notice of disciplinary action to the board. An appeal shall be made within twenty (20) days of the date of the board's notice.

1. A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Chiropractic Examiners by mail or delivery to the board's address as shown on the board's notice of disciplinary action.

2. If the request for a hearing is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request a hearing.

(d) The board may resolve the matter informally through mediation or negotiation. Any agreed order reached through mediation or negotiation shall be approved by the board and signed by the individual who is the subject of the complaint, the individual's attorney, and the chair of the board.

#### Section 2.

(1) The hearing shall be held in accordance with KRS Chapter 13B.

(2) The respondent shall be entitled to a reasonable continuance of the hearing date, for good cause, as recommended to the board by the hearing officer.

(3) The board shall keep a record of the hearing at least for as long as the matter is pending for a decision or appeal, and for the duration of the disciplinary action.

(4) It shall take a majority of the board to sustain the charges against the respondent licensee. The hearing officer shall issue a recommended order pursuant to KRS Chapter 13B, which the board shall consider, along with any exceptions filed by the parties, before issuing a final order.

(5) If the board sustains some or all of the charges, the board shall by majority vote establish the sanction under law that it finds warranted. The order of the board shall be mailed to the parties by certified mail, return receipt requested.

Section 3. Pursuant to KRS 312.160, the respondent may, within thirty (30) days of receipt of the order, appeal to the Franklin Circuit Court. In the absence of an appeal, the order of the board shall be final at the expiration of the thirty (30) day period.

(2 Ky.R. 607; rejected 3 Ky.R. 364; resubmitted over rejection; reprinted 431; eff. 10-1-76; Am. 16 Ky.R. 1615; eff. 4-12-90; 32 Ky.R. 1734; 33 Ky.R. 1071; eff. 10-18-2006; 40 Ky.R. 1414; 2121; eff. 3-20-2014; 47 Ky.R. 781, 1377; eff 2-4-2021.)