201 KAR 25:051. Procedure for complaints and hearings involving licensees: temporary suspension.

RELATES TO: KRS 218A.205, 311.490
STATUTORY AUTHORITY: KRS 218A.205(3), 311.410(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.410 authorizes the board to promulgate administrative regulations that are necessary to implement the provisions of KRS 311.390 to 311.510. KRS 218A.205(3)(c) requires the board to establish a procedure for temporarily suspending, limiting, or restricting a license. KRS 218A.205(3)(d) requires the board to establish a procedure for the expedited review of complaints pertaining to improper prescribing or dispensing of controlled substances. This administrative regulation establishes the administrative adjudication procedure for all proceedings before the board.

Section 1. Definitions.
(1) "Board" means the Kentucky State Board of Podiatry.
(2) "Complaint review committee" means a committee of the board members appointed by 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.
(3) "Contested case" means an adjudicatory proceeding before the board in which the legal rights, duties, or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the board or by some other person.
(4) "Order" means the whole or any part of a final disposition of an adjudication.
(5) "Party" means any person or agency named or admitted as a party to any proceedings of the board and shall include only persons who have a real interest in a matter before the board.
(6) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.
(7) "Respondent" means the licensee against whom a complaint has been filed.

Section 2. Form of Complaints.
(1) The complaint shall be sent to the last known address of the licensee that the board has on file.
(2) The licensee shall file a response within twenty (20) days from the date of the board's letter and include with the response a copy of the relevant podiatric medical records.
(3) Upon receipt of the response or after the twenty (20) day period has passed without a response, the complaint review committee shall review the complaint and the licensee's response, if any, and make a recommendation to the board whether the nature and quality of the allegations warrant dismissal, further investigation or the initiation of a hearing.
(4) In making its determination, the board shall consider whether the charges if proven would warrant sanction by the board.
(5) If the complaint involves the improper, inappropriate, or illegal prescribing of controlled substances, the board shall proceed under Section 4(2) of this administrative regulation.
(6) The board may at any time 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.
(7) The filing of formal charges shall require the affirmative vote of a majority of the board.
(8)

(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 set the matter for hearing and shall notify the licensee of the charges against him and the time and place of the hearing in accordance with KRS Chapter 13B.

(c)

1. The board is also entitled to resolve the matter informally through mediation or negotiation.

2. 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 3. Investigations.

(1) Upon the receipt of a complaint and following the expiration of the twenty (20) days provided for in Section 2(3) of this administrative regulation, the board or its appointed committee may cause an investigation to be made by an individual board member, by any investigation committee, or by any agent or representative appointed by the board. The board may also cause an investigation to be made on its own initiative at any time without a complaint.

(2) If a complaint involves the improper, inappropriate, or illegal prescribing of controlled substances, the board shall:

(a) Inform the Department of Kentucky State Police, the Office of the Attorney General, and the Cabinet of Health and Family services with three (3) days of the receipt of the complaint;

(b) Commence an investigation within seven (7) days of the filing of the complaint; and

(c) Complete the investigation and determine whether to proceed with adjudicatory proceedings against the respondent within 120 days of receipt of the complaint, unless an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 4. Commencement of Adjudicatory Proceedings.

(1) Upon completion of the investigation referred to in Section 4 of this administrative regulation or after the expiration of the twenty (20) day period referred to in Section 2(3) of this administrative regulation where an investigation is not made or whenever the board has completed an investigation made on its own initiative, the board may begin formal adjudicatory proceedings in accordance with KRS Chapter 13B.

(2) In any case in which the board has denied an application for a license or failed to renew a license, a hearing shall only be scheduled upon receipt by the board of a written request submitted by or on behalf of the person whose application for license was denied or not renewed.

Section 5. Temporary Suspension.

(1) The board chair or the board as a whole may issue an emergency order for the immediate temporary suspension of a license or certificate against which disciplinary action or an investigation is pending if it determines that there is a substantial likelihood that the licensee's practice constitutes a danger to patients or the public.

(2) The emergency order shall be made in accordance with KRS 13B.125 and shall be based upon a finding by the board that the emergency order is in the public interest and there is substantial evidence of immediate danger to the health, welfare, and safety of any patient or the general public.

(3) A licensee may appeal the emergency order by a written request to the board for an emergency hearing in accordance with KRS 13B.125 within thirty (30) days after receipt of the order.

Section 6. The board shall immediately submit all disciplinary and other reportable information to the National Practitioner Data Bank of the United States Department of Health and Human Services or any successor entity.

(9 Ky.R. 78; eff. 8-11-82; 20 Ky.R. 2660; eff. 5-18-95; 39 Ky.R. 548; 1389; eff. 2-1-2013; Crt eff.12-6-2019.)