201 KAR 32:070. Complaint procedure.

RELATES TO: KRS 335.305(1), 335.348, 335.350, 335.399
STATUTORY AUTHORITY: KRS 335.320(9), 335.325
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320(9) requires the Kentucky State Board of Licensure for Marriage and Family Therapists to promulgate administrative regulations to implement KRS Chapter 335. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions.

(1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as defined in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 335 or 201 KAR Chapter 32.

(3) "Complaint" means a written allegation of misconduct by a credentialed individual or other person that may constitute a violation of KRS Chapter 335 or 201 KAR Chapter 32.

(4) "Complaint screening committee" means a committee consisting of three (3) persons on the board appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint, and in addition to board members, the executive director of the board or another staff member may be appointed to serve on this committee.

(5) "Formal complaint" means a formal administrative pleading authorized by the board that charges a licensed individual or other person with an alleged violation and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. 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 using the Complaint Form and Instructions; and
2. Signed by the person offering the complaint; and

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

(2) Upon receipt of a complaint:

(a)

1. 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.
2. The individual shall have a period of twenty (20) days from the date of receipt to submit a written response.

(b)

1. Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant.

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

Section 3. Initial Review.

(1)

(a) After the receipt of a complaint and the expiration of the period for the individual's response, 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.

(b) 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.

Section 4. 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.

(a) The committee shall review the investigative report and make a recommendation to the board.

(b) The board shall determine whether there has been a violation of KRS Chapter 335 or 201 KAR Chapter 32 and a complaint shall be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, 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 violation has occurred but is not serious, the board shall issue a written admonishment to the licensee.

(a) A copy of the written admonishment shall be placed in the permanent file of the licensee.

(b)

1. The licensee shall have the right to file a response in writing to the admonishment within thirty (30) days of its receipt and may have it placed in his permanent file.

2.

a. Alternatively, the licensee may file a request for a hearing with the board within thirty (30) days of the admonishment.

b. Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4) 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 that states clearly the charge or charges to be considered at the hearing.

(a) The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(b) The formal complaint shall be processed in accordance with KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 335.305(1), it shall:

(a) Order the individual to cease and desist from further violations of KRS 335.305(1);

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.305(1) with a request that appropriate action be taken pursuant to KRS 335.399; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.305(1).

Section 5. 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 chairman.

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

Section 6. Notice and Service of Process. A notice required by KRS Chapter 335 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Notification. The board shall make public:

(1) Its final order in a disciplinary action pursuant to KRS 335.350 with the exception of a written admonishment issued pursuant to Section 4(3) of this administrative regulation; and

(2) An action to restrain or enjoin a violation of KRS 335.305(1).

Section 8. Incorporation by Reference.

(1) "Complaint Form and Instructions", 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(28 Ky.R. 189; Am. 562; eff. 9-10-2001; 35 Ky.R. 1867; 2417; eff. 6-5-09; Crt eff. 2-27-2020.)