

## **201 KAR 33:050. Complaint procedure.**

RELATES TO: KRS 310.041(3), (8), 310.042(2), 310.070(1), 310.990

STATUTORY AUTHORITY: KRS 310.041(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.041(1) requires the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists to promulgate administrative regulations. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

### Section 1. Definitions.

- (1) "Chairperson" means the chairperson or secretary of the board.
- (2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (4) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 310 or 201 KAR Chapter 33.
- (3) "Complaint" means a written allegation of misconduct by a credentialed dietitian or nutritionist that may constitute a violation of KRS Chapter 310 or 201 KAR Chapter 33.
- (4) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth charges against a licensed dietitian or nutritionist and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.
- (5) "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.
- (6) "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; 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 be allowed 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 that response shall be sent to the complainant.
    2. The complainant shall have seven (7) days from the date of receipt to submit a written reply to the response.

### Section 3. Initial Review.

- (1) The board shall establish a complaint committee composed of two (2) board members the purpose of which shall be to review complaints and information and make recommendations to the board about prospective action related to those complaints.

(2) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available. The complaint committee shall determine whether there is enough evidence to warrant a formal investigation of the complaint. After making this determination, the complaint committee shall recommend further action or disposition to the board.

(3) 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.

(4) If the board determines that a complaint warrants a formal investigation, it shall:

- (a) Authorize an investigation into the matter; and
- (b) Order a written report to be made to the complaint committee.

#### Section 4. Results of Formal Investigation; Board Decision on Hearing.

(1) Upon completion of the formal investigation, the investigator shall submit a verbal report to the complaint committee of the facts regarding the complaint.

(a) The complaint committee shall determine if there has been a prima facie violation of KRS Chapter 310 or 201 KAR Chapter 33 and if a complaint should be filed.

(b) After making this determination, the complaint committee shall recommend further action or disposition to the board.

(2) If the board determines that a letter of 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 copy of the written admonishment shall be placed in the permanent file of the licensee.

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

(b)

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

2. 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 letter of complaint warrants the issuance of a formal complaint against a respondent, the board shall prepare a formal complaint that states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairperson and served upon the individual as required by KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 310.070(1), it shall:

(a) Order the individual to cease and desist from further violations of KRS 310.070(1);

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 310.070(1) with a request that appropriate action be taken under KRS 310.990; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 310.070(1).

#### Section 5. Settlement by Informal Proceedings.

(1) The board through counsel 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 chairperson.

(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 310 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 under KRS 310.042 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 310.070(1).

(27 Ky.R. 3392; eff. 12-19-2001; Am. 36 Ky.R. 1314; 1910; eff. 3-5-2010; Crt eff. 2-21-2020.)