601 KAR 13:090. Medical Review Board; basis for examination, evaluation, tests.

RELATES TO: KRS 186.411, 186.440(6), 186.444, 186.570, Chapter 311
STATUTORY AUTHORITY: KRS 186.400, 186.444, 186.570
NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.444 and 186.570 require the Transportation Cabinet to promulgate administrative regulations establishing the Medical Review Board. This administrative regulation establishes the board, the procedures used by the board and the department in a medical review case, the process for informal hearings and appeals to formal administrative hearings, and the forms incorporated by the department.

Section 1. Medical Review Board Generally.

(1) The Medical Review Board shall be chaired by the Commissioner of the Department of Vehicle Regulation of the Transportation Cabinet or the commissioner's designee.

(2) The Medical Review Board shall be comprised of any number of physicians licensed to practice medicine in the Commonwealth of Kentucky, as established in KRS 186.444(2), and any number of licensed medical specialists and rehabilitation specialists, as established in KRS 186.570(1)(c) and 601 KAR 13:100.

(3) A quorum of the Medical Review Board shall be at least three (3) physicians licensed to practice medicine in the Commonwealth of Kentucky.

(4) Appointees to the Medical Review Board who are not physicians licensed pursuant to KRS Chapter 311 shall not count towards the quorum and may have their appointment restricted based on their specified area of expertise.

(5) The Commissioner of the Department of Vehicle Regulation or the commissioner's designee shall prescribe the time and place for the board to meet.

(6) The non-state government members of the board who participate in a meeting shall be paid $200 each day or part of a day and reimbursed for necessary expenses incurred in attending the meeting.

Section 2. Initiation of a Medical Review Board Case and Agency Actions in Response to Medical Conditions.

(1)

(a) A Medical Review Board case that requires investigation into a person's medical condition before the commissioner takes licensing action shall be initiated when the commissioner receives notice that one (1) or more of the following conditions exists in a person and the commissioner or the commissioner's designee determines that the person's physical or mental condition could render it unsafe for the person to operate a motor vehicle upon the public highways:

1. Driver has been named in a notarized Medical Review Affidavit Form TC 94-182 by at least two (2) citizens as being incapable of properly operating a motor vehicle due to physical or mental condition;

2. Driver has been reported by a physician, licensed medical specialist as defined in 601 KAR 13:100, or rehabilitation specialist as being incapable of driving safely due to physical or mental condition or due to medication prescribed for an extended time;

3. Driver has been reported by a law enforcement officer or a Kentucky State Police license examiner who has reason to believe or who has observed an individual driving or behaving in an erratic or dangerous manner that indicates a possibility of a physical or mental condition that could impair driving ability;

4. Applicant for a motor vehicle operator's license or for license renewal indicates on the application form that the applicant has a physical or mental condition that could impair driving ability;

5. Driver's official record kept by the Department of Vehicle Regulation indicates a possibility of physical or mental condition that could impair driving ability;

6. Driver has been reported by a commonwealth attorney, county attorney, county clerk, circuit clerk, sheriff, or judge as being incapable of driving due to a physical or mental condition;

7. Driver has reported to the Transportation Cabinet or Medical Review Board that he or she has a mental or physical condition that could impair driving ability; or

8. Driver has been reported by a government agency as being incapable of driving safely due to a physical or mental condition.

(b) A Medical Review Board case that requires investigation into a person's medical condition and shall result in the automatic suspension of a person's driving privileges shall be initiated when the commissioner receives notice that one (1) or more of the following conditions exists in a person:

1. Driver has indicated that he or she "blacked out," lost consciousness, or suffered a seizure prior to a reportable motor vehicle accident as established in KRS 186.411; or

2. Driver has, by judicial decree, been adjudged incompetent as established in KRS 186.440(6).

(2)

(a) If the commissioner or the commissioner's designee decides pursuant to this administrative regulation and 601 KAR 13:100 to take action regarding a person's driver license, the commissioner shall provide written notice to the person of the decision to take licensing action.

(b) Notice to the person of the commissioner's decision to take licensing action shall also inform the person that the licensing action shall take place unless the person submits to and completes an examination in satisfaction of the medical standards established in 601 KAR 13:100, Sections 4 through 11, by a physician licensed to practice medicine pursuant to KRS Chapter 311 or, if a vision examination is requested, a "vision specialist" as defined by 601 KAR 13:100 within thirty (30) days of the date of the notice. The required medical examinations and diagnostic testing shall be conducted at the person's own expense by a physician licensed to practice medicine pursuant to KRS Chapter 311 or, if a vision examination is requested, a "vision specialist" as defined by 601 KAR 13:100 of the person's choice.

(c) If the commissioner needs more information regarding a person's medical condition be- fore making a decision about licensing actions, the commissioner shall require that a person submit to and complete one (1) or more additional examinations by a qualified physician. The required medical examinations shall be conducted at the person's own expense by a licensed physician of the person's choice.

(3)

(a) Within thirty (30) days of the date that the commissioner provided written notice to the person pursuant to subsection (2)(b) of this section, the examining physician shall report and submit the results of the person's required medical examination directly to the Division of Driver Licensing on a form provided by the Department of Vehicle Regulation.

(b) The commissioner may, pursuant to this administrative regulation, authorize the suspension of the person's driving privilege if the examining physician fails to submit the completed results of the required medical examination on the required form to the Medical Review Office within thirty (30) days of the date of the commissioner's notice.

(c) The Medical Review Affidavit Form TC 94-182, the Medical Review Examination Form TC 94-183, the Medical Review Vision Examination Form TC 94-185, and the Medical Review Psychiatric Examination Form TC 94-184 shall be used by examining physicians to submit the results of the required medical examination or examinations.

(4)

(a) As soon as practicable after receipt of the completed form, the Department of Vehicle Regulation with the advice and instruction of the Medical Review Board shall evaluate the completed form according to the medical standards established in 601 KAR 13:100.

(b) The Department of Vehicle Regulation shall submit a case in which medical or rehabilitation expertise is needed to evaluate the driving ability of a person to the Medical Review Board.

(c) The Medical Review Board may make recommendations to the Department of Vehicle Regulation for further medical examination, testing, or restriction of the person's driving privilege, or denial of driving privilege.

(d) Based on this administrative regulation and 601 KAR 13:100, if the Medical Review Board recommends further examination or investigative testing or if the Department of Vehicle Regulation determines it to be necessary, the Commissioner of the Department of Vehicle Regulation or the commissioner's designee shall notify the person of the date by which the person shall comply.

Section 3. Notice and Hearing.

(1) If the Medical Review Board or Department of Vehicle Regulation, pursuant to this administrative regulation and 601 KAR 13:100, recommends total suspension of a person's driving privilege or any limitations thereon, the Commissioner of the Department of Vehicle Regulation or the commissioner's designee shall notify the petitioner at the last known address of the petitioner that this action shall be taken unless a written request for an informal hearing before the board is received from the petitioner within twenty (20) days following the first class mailing of the notice. The petitioner shall also be informed of his or her right to:

(a) An informal hearing before the board; and

(b) If necessary, an appeal to the board for a formal administrative hearing pursuant to KRS Chapter 13B.

(2) An informal hearing shall be scheduled as early as practicable at a time and place designated by the commissioner or the commissioner's designee. Notice of the time and place of the in- formal hearing shall be mailed to the petitioner no later than ten (10) days prior to the hearing date.

(3)

(a) If the petitioner fails to appear at the informal hearing, the driving privilege of that petitioner shall be automatically suspended.

(b) The petitioner may request one (1) rescheduling of the informal hearing and the request shall be submitted to the Medical Review Office in writing no later than five (5) days prior to the hearing date.

1. The commissioner, following the recommendation of the Medical Review Office, shall grant or deny the request to reschedule or suspend the driving privilege of the petitioner.

2. The Medical Review Office shall notify the petitioner of the decision.

(4) The commissioner or the commissioner's designee shall preside at the hearing before the Medical Review Board, and at least three (3) physician members shall be present.

(5) The presiding officer shall be appointed by the commissioner and may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant records.

(6) The scope of the hearing shall be limited to the presentation of the evidence upon which the Medical Review Board shall make a recommendation to the commissioner and any medical evidence the petitioner wishes to present in explanation of this evidence.

(7) Evidence may be presented at the hearing in the form of depositions.

(8) All testimony at the hearing shall be recorded, and the complete record shall be comprised of any exhibits introduced at the informal hearing, any depositions, and other documents placed in the petitioner's medical review chart by the Medical Review Office.

(9) Within ten (10) working days after the hearing, the commissioner shall issue a decision that shall be forwarded to the petitioner along with the notice required pursuant to subsection (10) of this section.

(10) The petitioner shall be informed of his or her right to a formal administrative hearing pursuant to the provisions of KRS Chapter 13B.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Medical Review Affidavit Form TC 94-182", revised March 2019;

(b) "Medical Review Examination Form TC 94-183," revised March 2019;

(c) "Medical Review Psychiatric Examination Form TC 94-184," revised March 2019; and

(d) "Medical Review Vision Examination Form TC 94-185," revised March 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, Medical Review Office, 200 Mero Street, Second Floor, Frankfort, Kentucky 40622 between 8:00 a.m. and 4:30 p.m. Monday through Friday.

(23 Ky.R. 219; Am. 1593; eff. 10-1-1996; 46 Ky.R. 241, 1260, 1418; eff. 1-3-2020.)